BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

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. 090015

Petitioners, Ronenn Roubenoff and Barri S. Falk, applied to the Building Commissioner for permission to construct a two car garage addition and to enclose an existing porch creating a mudroom per plans. The application was denied and an appeal was taken to this Board.

On March 26, 2009, 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 21, 2009, at 7:00 p.m. in the Selectmen's conference room, 6th floor, Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to their attorney of record (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 30, 2009 and May 7, 2009 in the Brookline TAB, a newspaper published in Brookline. Copy of said notice is as follows:

LEGAL NOTICE

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
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: **RONENN ROUBENOFF & BARRI S. FALK**
Location of Premises: **34 WELCH ROAD BRKL**
Date of Hearing: **5/21/2009**
Time of Hearing: **7:00 p.m.**
Place of Hearing: **Selectmen's Conference Room, 6th flr.**

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

1) **5.09.2.j; Design Review, Special Permit Required.**
2) **5.20; Floor Area Ratio; Variance Required.**
3) **5.22.3.c; Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units. Special Permit Required.**
4) **5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.**
5) **5.70; Rear Yard Requirements; Variance Required.**
6) **5.74; Fences and Terraces in Rear Yards; Variance Required.**
7) **For the Design of All Off-Street Parking Facilities**
   - **6.04.5.c.1; Variance Required.**
   - **6.04.9.b; Variance Required.**
   - **6.04.14; Variance Required**
   - **6.04.14; Planning Board Determination and Modification Required.**
8) **8.02.2; Alteration or Extension; Special Permit Required.**

Of the Zoning By-Law to construct a two car garage addition
and to enclose an existing porch creating a mudroom per plans

at **34 WELCH RD BRKL**

Said Premises located in a **S-25 (Single family)** 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/MasterTownCalandar/?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.***

Enid Starr
Jesse Geller
Robert De Vries

At the time and place specified in the notice, a public hearing was held by this Board. Due to a scheduling conflict, the place of the hearing was moved to Room 111, first floor, Town Hall. Appropriate notifications were posted at all entrances of the Town Hall as well as on the 6th floor of the Town Hall outside the advertised hearing location of the change in location to the first floor. Present at the hearing were the Chairman, Jesse Geller, and Board Members, Jonathan Book and Rob De Vries. The Chairman asked if the petitioners waived the reading of the notice. Attorney Roger Lipson, representing the petitioners, agreed to waive a reading of the notice. The Chairman outlined the order of procedure to be followed for the hearing.

The petitioners, Barri S. Falk and Ronenn Roubenoff, addressed the Board Members. They reminded the Board Members that they had appeared before the Zoning Board of Appeals in June, 2008 and had received relief permitting them to construct an attached three-car garage. Ms. Falk stated that when they began obtaining cost estimates from contractors for the work, the bids were 300% to 400% over their original cost estimates and priced out at about $1,000 per square foot which was out of their price range. She said that they then re-designed the garage as a two car garage addition and they are now before the Board for relief required in connection with the re-designed garage. They then turned the presentation over to their architect, David Amory, and their landscape architect, Andrew Magee, for an overview of the proposal.

David Amory, principal of David Amory Architects, of Boston, Massachusetts, presented several large drawings showing the current site plan, the footprint of the property and the proposed two car garage addition set back from the street and located at the south end of the house. In addition, the petitioners seek to enclose the existing porch to create a mudroom. He pointed out that the new driveway is no longer sunken as in the previous plan; will be built at grade level; and will have a turnaround. The proposed garage dimensions will be 24 feet wide by 28 feet in depth. At the rear is a

terrace area which connects the garage to the existing porch and which is to be enclosed to become a mudroom. There will also be a walkway that will go around the side of the garage and connect with the terrace. Mr. Amory pointed out that a door will be installed in an existing bedroom which will open out onto the top of the garage where there will be a landscaped garden. He stated that there will also be a railing on top of the garage surrounding the rooftop garden and a wooden arbor overhang around the four sides of the garage. Mr. Amory reviewed the elevations showing different views of the garage and concluded his presentation.

Andrew Magee, the landscape architect, of Norfolk, Massachusetts, next presented the landscaping and drainage plans. He stated that the pedestrian walkway will be porous and semi-porous allowing for as much drainage as possible. The driveway entry at the street will be 17 feet wide and will expand to 24 feet at the garage entrance. There will be an arbor structure built around the top edge of the garage on all four sides and a pathway under it that will allow access to the terrace, backyard and the house. The terrace will be constructed of a semi-soft stone to allow drainage and planting. Mr. Magee stated that he planned to construct a green roof with a roof garden that will consist of succulent plants, the result of which will be that very little water will be draining from the roof. The rooftop garden will have as many plantings as possible. He stated that one tree would have to be removed for construction of the driveway but would be replaced elsewhere on the property. His goal is to keep as much green space as possible. Mr. Magee pointed out that storm water will be collected from the driveway and drained "to daylight" so that there would not be any run off onto nearby properties.

Robert De Vries asked if there were any changes planned for the bluestone terrace on the west side. Mr. Magee replied that no changes were being made.

Jonathan Book asked how the rear yard setback for the two car garage compared to what was presented in the previous proposal last year. Although he didn't have the previous plan before him for

comparison, Mr. Amory stated that he believed the proposed garage was further away from the rear lot line than the previous plan because the new garage was smaller.

Mr. Geller inquired about the FAR and setback requirements, which are the primary relief sought and whether the plantings are intended to offset the encroachment of the garage and proximity to the rear lot line. Mr. Magee replied that it was. Mr. Geller then asked what were the counterbalancing amenities being offered for relief by the petitioners in regard to the rear yard setback requirement.

The petitioners counsel, Roger Lipson, of 7 Harvard Street, Brookline, interjected at this point and offered to address the Board in response to Mr. Geller's question and in regard to other relief sought by the petitioners. First, Mr. Lipson stated that under **Section 5.22.3.c**, the Board of Appeals may allow by special permit an increase in floor area of 350 square feet or less, provided that the resultant floor area does not exceed 150% of the permitted floor area. Mr. Lipson said that the additional floor area is 183 square feet, which is 121% of the permitted gross floor area, and, therefore, qualified under that Section of the Zoning By-Law for the issuance of a special permit. In regard to the rear yard setback requirement, Mr. Lipson said that this condition was virtually unchanged from the situation that was presented to the Board last year and for which the Board granted a special permit based on petitioners offer of counterbalancing amenities, include removing the automobiles from the parking area in front of the house and replacing the parking area with attractive landscaping. Additionally, Mr. Lipson pointed out that the smaller size of the garage would require less removal of the surrounding landscaping. He stated that the addition of an attractive roof garden would further enhance the overall attractiveness of the project. Mr. Lipson then cited the provisions of Massachusetts General Laws Chapter 40A, Section 10 as it related to the previous proposal by citing the unusual shape of the lot, the unique soil conditions consisting of a substantial amount of ledge and the topography of the land which sloped precipitously in the rear of the property, all of which warranted the issuance of a variance under **Section 6.04.14** last

year. Mr. Geller stated that he didn't think a variance was required under the present proposal and therefore the required conditions under Massachusetts General laws Chapter 40A, Section 10 were not applicable. Mr. Lipson agreed that no variances were required, under **Section 6.04.14** because the proposed garage was 24 feet wide and in compliance, or otherwise. In reference to the design of all off-street parking facilities, Mr. Lipson stated that the petitioners had presented a sufficient basis for the issuance of a special permit under **Section 6.04** for front yard setback relief and for the proposed landscaping, driveway surface materials and drainage plans.

Mr. Geller asked Mr. Lipson if he would briefly describe whether the proposed project meets the conditions imposed under **Section 9.05**. Mr. Lipson replied that the site chosen for the garage is the only place on the lot where the garage could be located, that the garage would not substantially change the footprint of the existing property, that the removal of automobiles from the dirt parking area in front of the house would enhance the safety of vehicular traffic on the street and that the substitution of attractive landscaping in place of the dirt parking area would improve the visual appearance of the street.

The Chairman asked if any of the Board Members had any questions. There were none.

The Chairman asked whether anyone wished to speak in favor of or against the proposal. No one spoke in favor or against the petition.

Lara Curtis, Senior Planner, delivered the findings of the Planning Board:

Section 5.09.2.j – Design Review: Any exterior addition for which a special permit is requested pursuant to Section 5.22 (*Exceptions to Maximum Floor Area Ratio Regulations*) requires a special permit subject to the design review standards listed under Section 5.09.4(a-l). The most relevant sections of the design review standards, as they relate to the applicant's original design, are described below:

- *Preservation of Trees and Landscape:* One tree will need to be removed to install the driveway. The rear yard of the lot is heavily wooded, and the applicants are planning to use the roof of the garage as garden area, as well as landscape the area previously used as a driveway.

- *Relation of Buildings to Environment:* The garage would be set back approximately 10 feet from the dwelling's main front façade. The proposed addition in the rear is minor and uses the footprint of an existing porch, so it should integrate well with the main building.

- *Open Space:* The proposed driveway will require the removal of landscaped open space, but the top of the garage will serve as a roof garden and the existing driveway area will be landscaped.

- *Circulation:* The proposed driveway's width is wide enough for two vehicles to enter and exit as well as turn around. The applicants are proposing to remove the existing driveway and parking area directly in front of the dwelling's main entrance, as well as the driveway leading to the greenhouse.

- *Drainage:* The applicants maintain that storm water will be collected from the driveway and drained "to daylight" in a manner that will not adversely affect neighboring properties.

- *Heritage*: The site is in the Town Green National Historic District, and the plans indicate the removal of a greenhouse structure. The applicant has already obtained a demolition permit from the Preservation Commission to remove the greenhouse. The foundation of the greenhouse will be retained and used as a landscape garden feature and drywell.

Section 5.20 – Floor Area Ratio
Section 5.22.3.c – Exceptions to Maximum Floor Area Ratio (FAR) Regulations: Special permit required

FLOOR AREA

	Allowed	Existing	Proposed	Finding
Floor Area Ratio	0.20 100%	0.235 118%	0.242 121%	Special permit*
Floor Area	5,602 s.f.	6,592 s.f.	6,775 s.f.	

*Under Section 5.22.3.c, the Board of Appeals may allow by special permit an increase in floor area of 350 square feet or less, provided the resultant floor area does not exceed 150% of the permitted gross floor area.

Section 5.70 – Rear Yard Requirements
Section 5.71 – Projections into Rear Yards
Section 5.74 – Fences and Terraces in Rear Yards
Section 6.04 – Design of All Off-Street Parking Facilities

GARAGE & PARKING

	Required	Existing	Proposed	Finding
Front Yard Setback	30 feet	5 ft. (est. parking area)	34.1 feet	Complies
Rear Yard Setback	50 feet	n/a	19.7 feet	Special Permit**

**Under Section 5.43, the Board of Appeals may allow by special permit the substitution of other dimensional requirements for setback requirements if counterbalancing amenities are provided.

Ms. Curtis said that the Planning Board is not opposed to the proposal to construct an attached garage and rear addition for this single-family dwelling. The garage will provide parking for the dwelling in a better location than presently existing, and the previous parking area will be landscaped. The garage is set back from the dwelling's main façade so that it does not overwhelm the front façade, and its roof and perimeter will be landscaped, which should soften the garage's edges. The proposed porch addition is minor, should not be visible from the street, and will add only a minimal amount of square footage to the building. The overall project is attractively designed and should integrate well with the existing building. Once details regarding the garage, walkways, and railings are finalized, these details should be indicated on final plans and submitted to the Planning Department for review and approval. Therefore, the Planning Board recommends approval of the proposed garage and rear addition, as shown in the plans prepared by Amory Architects and dated 2/27/09, and the landscape plan prepared by Andrew Magee and dated April 2009, subject to the following conditions:

1. Prior to issuance of a building permit, final plans and elevations of the garage and addition, indicating materials, fencing, railings and walkways, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.

2. Prior to issuance of a building permit, a final landscaping plan, indicating all counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval. This plan shall indicate the removal of the driveway in front of the dwelling and leading to the greenhouse building. Counterbalancing amenities shall endeavor to minimize the impact of the new garage on affected abutters.

3. Prior to issuance of a building permit for the demolition of the greenhouse, all needed approvals from the Preservation Commission or their staff shall be obtained.

4. Prior to 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 architect or land surveyor; (2) final elevations of the garage and rear addition, stamped and signed by a registered architect; and (3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Ms. Curtis pointed out to the Board Members that Condition Number 3 had already been met and suggested thatthe Board could delete it if they wish.

Michael Shepard, Building Commissioner delivered the comments for the Building Department. He stated that the Building Department was familiar with this case from the previous application which was heard last year, the main difference being that last year the Board had to deal with the granting of a variance due to Section 6.04.14 which required that a garage front facing the street could not exceed 40% of the width of the property or 24 feet, whichever was less. Mr. Shepard expressed his view that the current proposal is a more conservative approach than the prior application. Mr. Shepard stated that the FAR requirements are modest and well within what the Board can allow for the granting of a special permit. The proposal to build the garage will get the cars off the street. Therefore, the Building Department recommends approval of the proposal and will assure that during the construction process that the provisions of the Building Code and the conditions imposed by the Board will be adhered to.

The Chairman asked the Board Members if they had any further questions. Robert De Vries asked David Amory if the retaining wall on the side toward the rear of the house was going to have plantings on it or if he knew what material was going to be used for the retaining wall itself. Mr. Amory answered that the foundation wall along the walkway around the garage would probably be stucco. He was not sure what type of stone would be used for the retaining wall but added that there will be landscaping. Mr. De Vries believed that the type of material to be used for the retaining wall was important because it would be visible from Warren Street and the neighboring properties. Mr. De Vries suggested that a condition be added to the Board's decision concerning the material to be used for the retaining wall, other than concrete. Mr. Lipson informed the Board Members that he recalled that Mr. De Vries had suggested in last year's decision that a condition concerning the material used for the retaining wall be added to the Board's conditions. He produced a copy of the prior Board decision showing that the words "retaining wall" had been inserted in condition no. 1. The Board Members with the petitioners'

consent determined to amend the Planning Board recommended conditions by adding the words "retaining wall" to condition no. 1 of the Board's decision.

The Board Members, having deliberated on this matter and, having considered the foregoing testimony, conclude that the requirements for the issuance of the special permits for the relief requested have been met under **Sections 5.70, 5.71, 5.74** and **6.0**4 all of the Zoning By-Law and as required in connection with **Section 5.09** of the Zoning By-Law. The Board further finds that the special permits for the relief requested are warranted under **Section 9.05** of the Zoning By-Law based on the following findings:

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. 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 unanimously votes to grant the requested relief subject to the following conditions:

1. Prior to issuance of a building permit, final plans and elevations of the garage and addition, retaining wall, adequate drainage, indicating materials, fencing, railings and walkways, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, a final landscaping plan, indicating all counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval. This plan shall indicate the removal of the driveway in front of the dwelling and leading to the greenhouse building. Counterbalancing amenities shall endeavor to minimize the impact of the new garage on affected abutters.

3. Prior to issuance of a building permit for the demolition of the greenhouse, all needed approvals from the Preservation Commission or their staff shall be obtained.

4. Prior to 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 architect or land surveyor; (2) final elevations of the garage and rear addition, 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: June 11, 2009

Jesse Geller, Chairman

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals

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