



Town of Brookline

Massachusetts

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

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 090079

Petitioner, Linda Santosa, applied to the Building Commissioner for permission to construct a new single family residence with a proposed lateral access drive to a motor court and garage as well as a semi-circular drive in front of the home at 77 Yarmouth Road. The application was denied and an appeal was taken to this Board.

On 17 December 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 18 February 2010, at 7:00 p.m. in the Selectmen's hearing room, 6th floor, Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to his 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 28 January and 4 February 2010 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: LINDA SANTOSA
Owner: BRAVER TRS MARTIN D
Location of Premises: 77 YARMOUTH RD
Date of Hearing: 02/18/10
Time of Hearing: 7:00p.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.) 4.07; Table of use regulations,
 - Accessory use #54, more than 4 parking spaces total on site not permitted, variance required.
 - Accessory use #55, more than 4 parking spaces on site, special permit required.
- 2.) 5.52; Fences and terraces in front yards, walls more than six feet height not permitted in front yards, variance required.
- 3.) 5.62; Fences and terraces in side yards, walls more than seven feet height not permitted in side yards, variance required.
- 4.) 5.74; Fences and terraces in rear yards, walls more than seven feet height not permitted in rear yards, variance required.
- 5.) For the design of all off-street parking facilities:
 - 6.04.4.f.1)a though g; Pedestrian and vehicle safety, lines of sight, special permit required.
 - 6.04.5.c.1; Parking in front yard not permitted, variance required.
 - 6.04.5.c.4; Motor court closer than 30 feet to side lot line, variance required.
 - 6.04.9.b; Driveway surfacing and drainage information not submitted, variance required.
 - 6.04.14; More than 40% of building and more than 24 feet; of garage, motor court, access drive, and semi-circular drive shown on plans, variance required of the Zoning By-Law to construct a new single family residence with a proposed lateral access drive to a motor court and garage and a proposed semi-circular drive in front of the home per plans at 77 YARMOUTH RD.

Said Premise located in a S-40 (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.

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Robert De Vries**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Mark Zuroff and Board Members, Jonathan Book and Christopher Hussey. The petitioner was represented by Attorney Thomas May of 300 Washington Street, Brookline, MA and their architect, Mr. Robert Bramhall of Rob Bramhall Architects, 14 Park Street, Andover, MA.

In describing the site Mr. Bramhall said that 77 Yarmouth Road is located approximately three houses down from the intersection of Yarmouth, Singletree Road, and Heath Street. A single-family dwelling sits on the lot, along with a man-made pond in the rear. The landscaping is relatively overgrown. The neighborhood consists of large single-family homes and is situated between The Country Club and Pine Manor College.

Mr. Bramhall said that the petitioner, Linda Santosa-Wong, wishes to construct a circular driveway and motor court area for a new single-family dwelling she plans to build. There is an existing circular driveway, garage and carport area serving the current dwelling. The existing curb cuts would be removed when the existing dwelling is demolished, and a new circular driveway, along with an extension leading to a motor court parking area and three-car garage, would be constructed to serve the new dwelling. Various landscape walls would also be constructed around the driveway and front yard area. He said that they have revised the initial plan so that much of the driveway and all of the motor court are out of the front and side yard setbacks. Mr. Bramhall

reported that the petitioner recently received a certificate on non-significance from the Preservation Department in preparation for demolishing the existing single family home on the site.

Mr. Bramhall presented a rendering of existing conditions at 77 Yarmouth Road showing specifically the location of the existing driveway and irregular topography and shape of the lot. He represented that the irregular shape of the lot dictated the location of the new home as well as access thereto. He said that due to the non-typical lot shape, large portions of the property are not allowed to be built upon. Because the site is long and narrow it sets itself up by limiting the location of the new home. Mr. Bramhall said that long front but narrow depth of the lot created issues with accessing the garage and vehicle maneuvering as well as visitor parking and ready access to the front door of the home. He said that they attempted to resolve this issue by turning the garage so the entrance does not face the street and provide maneuvering space outside the front setback. The curved section of the driveway is primarily for visitors to access the front door. Mr. Bramhall said that the width of the driveway throughout is 12 feet. In conclusion, Mr. Bramhall said that the tightness of the site caused a push-pull scenario and location of desired amenities related to parking and vehicular movement was extremely challenging. He said the scenario before the Board is the result of trying to make the best use of the site and it has the added benefit of eliminating many of the retaining walls in previous plans. He said they met with the neighbors, listened to their concerns and they are all comfortable with the proposal before the Board.

Chairman Zuroff asked about the counterbalancing amenities required under **Section 5.43** of the Zoning By-Law. Mr. Bramhill responded that there is extensive landscaping planned for the site including gates, small retaining walls to help ameliorate grade changes and plantings to help provide privacy for the homeowners. He said the landscaping is planned to work with existing

grade changes and drainage issues were accommodated using the existing topography of the site. Mr. Zuroff asked how much of the garage and driveway is visible from the street. Mr. Bramhill stated that with the planned landscaping you probably will not see either the driveway or the garage.

Board Member Book asked about the surface of the driveway. Mr. Bramhall responded that in areas closest to the street the owner is considering some type of pavers and the balance of the driveway including the area in front of the garage would probably be chip-sealed. Noting the Planning Board recommended some type of pervious surface for the driveway, Mr. Book asked whether the petitioner had given it any thought. Mr. Bramhill responded that they were considering several options related to this recommendation however, at this juncture they were still being studied. Mr. Book asked how many cars can be parked on the property. Mr. Bramhill responded that three cars can be accommodated in the garage and it is expected that visitors will queue-up near the garage after dropping-off passengers in front of the house. While not intended for permanent parking, he said the circular section would be used much like anyone else would use it, as transient/visitor parking.

Concerned about visibility upon exiting the driveway, Board Member Hussey asked about the distance from the edge of pavement to the planting parallel to the street. Mr. Bramhall responded that the plantings were 12-15 feet off the street and this will allow ample sight distance for exiting vehicles as well as providing visibility for vehicles traveling along Yarmouth Road.

Attorney May addressing the variance relief required for the circular driveway, reported that members of the Planning Board said during their hearing that it was not the intent of **Section 6.04.14** to prohibit circular drives similar to the one proposed. He said that the Zoning Board of Appeals could find that the subject section of the By-Law does not pertain in this case.

Nevertheless, Attorney May said that ample evidence has been submitted by the Architect relative to the unusual shape and topography of the lot, that a substantial hardship is imposed upon the owner. He said the special conditions relative to lot shape and topography do not generally affect the zoning district and granting of the requested variance will not be substantially detrimental to the public good. Attorney May said the granting of a variance in this case will not nullify or substantially derogate from the intent or purpose of the zoning by-laws. He said the intent of the section from which they request a variance was to prevent so-called “snub-nosed houses”. That is, garages that occupy all or most of the façade of a home and face the street thereby presenting a non-pedestrian friendly environment. Attorney May reminded the Board that the existing driveway is circular as well. He said that the current plan actually presents a safer alternative for the entrance and exit off Yarmouth Road. Attorney May referring to the findings required in **Section 9.05** for the granting of special permit relief said that the specific site is an appropriate location for a residential home, as developed, it will not adversely affect the neighborhood, there will be no nuisance or serious hazard to vehicles or pedestrians and adequate facilities are provided for the proper operation of the proposed use.

Board Member Book requested that Attorney May clarify the uniqueness of the lot and topography that he feels warrants positive consideration relative to the request for a variance. Attorney May responded that due to the topography and shape of the lot to comply with the provisions of the by-law they would have to rotate the garage to fully face the street and thereby fly in the face of what he believed was the intent of **Section 6.04.14**. Mr. Book asked specifically for an explanation of the need for the circular drive in front of the proposed home that in his opinion is the cause of the problem and the resultant need for relief in the form of a variance. Attorney May responded that the circular drive improves the safety of vehicles entering and

leaving the lot as well as improving pedestrian and vehicular flow to the front of the home. Attorney May said the safety issue regarding traffic is, in his opinion, exacerbated by the uniqueness of the lot. Mr. Bramhall also said that his firm did an exhaustive study regarding various scenarios relative to traffic flow and safety. In all cases he said due to the unique shape of the lot no plan solved all the issues. The plan before the Board is the solution that presents the fewest issues while preserving the safety of vehicular flow. He said that the owners by-right are allowed to build up to a 6,000sf home, however due to the uniqueness of the lot, effectively they are limited to approximately 4,000 sf. He said that due to the substantial cost of the property this presents a financial hardship to the petitioner.

Chairman Zuroff asked whether anyone in attendance wished to speak in favor or against the proposal. No one rose to speak.

Lara Curtis, Senior Planner, provided the findings of the planning staff.

Section 4.07 – Table of Use Regulations, Accessory Uses #54 and 55: Having more than four parking spaces on site requires a special permit. The garage will have three bays for three vehicles. The applicant was cited as having more than four parking spaces due to the parking area in front of the dwelling in the circular drive and in the motor court. *Special permit required.*

Section 5.52 – Fences and terraces in front yards: Walls more than six feet high are not permitted in front yards. The initial plan submitted included several landscape walls and terracing that exceeded the allowable height. The applicant has revised the plan, and the proposed wall along the front yard appears to be in compliance. The gates proposed for the two curb cuts are proposed to be six feet tall.

Section 5.62 – Fences and terraces in side yards: Walls more than seven feet high are not permitted in side yards. The initial plan submitted included several landscape walls and terracing that exceeded the allowable height. The applicant has revised the plan, and the proposed wall along the side yard appears to be in compliance.

Section 5.74 – Fences and terraces in rear yards: Walls more than seven feet high are not permitted in rear yards. The initial plan submitted included several landscape walls and terracing that exceeded the allowable height. The applicant has revised the plan, and there do not appear to be any walls in the rear yard setback.

Section 6.04.4.f.1 (a-g) – Design of All Off-street Parking Facilities: All entrance and exit drives shall be designed to ensure maximum pedestrian and vehicular safety and minimize potential conflicts between pedestrians and motor vehicles. The Planning Board and Board of Appeals may require as a condition of a special permit one or more of the following safety enhancements to be provided: enhancements to the facility exit that will ensure that all exiting vehicles come to a complete stop; textured or marked ramps, drives or driveway aprons; modifications to required or proposed landscaping to ensure visibility is not impaired; visual and/or auditory warning devices; other enhancements that provide the optimum level of pedestrian safety.

Section 6.04.5.c.1 – Design of All Off-street Parking Facilities: Parking in the front yard setback is not permitted. The plan has been redesigned so that much of the driveway and parking areas are outside of the front setback; however, partial sections of the drives are still within the front yard setback.

Section 6.04.5.c.4 – Design of All Off-street Parking Facilities: A motor court closer than 30 feet to the side lot line is not permitted. A parking lot containing more than six vehicles shall be set back from all lot lines the distance specified for minimum front yard depth, which in this case is 30 feet. *Setback relief required if motor court area allows for parking for six vehicles.*

Section 6.04.9.b – Design of All Off-street Parking Facilities: The area of the lot not landscaped and so maintained, including driveways, shall be graded, surfaced with asphalt or other suitable material, and drained to the satisfaction of the Building Commissioner, to the extent necessary to nuisance of dust, erosion, or excessive water flow across public ways.

Section 6.04.14 – Design of All Off-street Parking Facilities: No more than 40 percent of the building façade, or 24 feet, whichever is less, facing a public way, may be devoted to parking or other vehicular use, including garage or drive-through space. The surfaced area of parking and entrance and exit drives shall not exceed the width allowable under this section, and all remaining space between the building and the street shall be landscaped open space. In this proposal, the entire front façade of the building has driveway area between it and the public way, largely due to the circular driveway. *Variance required.*

Ms. Curtis reported that the Planning Board supports this application for a circular driveway and motor court area. The circular drive would be a helpful amenity to visitors to the property, providing a safe option for parking their vehicles off the street, which is rather narrow and curves where this property is located. Other properties in the vicinity have circular driveways, including the previously existing dwelling, and the paved areas will be screened by landscaping.

Additionally, the Board appreciates that the plan was revised to remove much of the parking and drive areas outside of required yard setbacks, and to bring the proposed walls into compliance with

height requirements. The Planning Board has concerns that *Section 6.04.14* is affecting proposals that were never intended to come under this section. The Board understands that this section of the Zoning By-law was intended to prevent parking and driveway proposals that have detrimental effects on the streetscape, such as three-car garages facing the street. In this case, the three-car garage is oriented to the side, and the circular driveway would not have a negative effect on the streetscape. However, due to the extensive paving, and the possible drainage concerns related to the site's slope, the Board would like the applicant to consider pervious paving materials, either throughout the site or as borders along the driveway edges. Therefore, the Planning Board recommended approval of the proposed site plan, prepared by Rob Bramhall Architects and dated 02/01/10, with the following conditions:

- 1. Prior to issuance of a building permit, the applicant shall submit to the Assistant Director for Regulatory Planning for review and approval a final site plan, stamped and signed by a registered architect and registered land surveyor, indicating all dimensions, including a 12-foot driveway width, all wall heights, the locations of all parking spaces, and all paving materials, including an emphasis on porous pavements.**
- 2. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; and 2) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.**

Walter White, Deputy Building Commissioner, delivered the comments of the Building Department. Mr. White reported that the Building Department had no objection to the plan presented before the Board. He said that the petitioner had worked very diligently to modify the initial submission that required substantial relief. Mr. White opined that **Section 6.04.14** was never intended to prevent circular driveways. However, Mr. White said that, in his opinion, adequate testimony as to hardship had been presented to grant the variance for the circular drive.

The Board, having heard all the testimony, deliberated on the merits of the application. Board Member Hussey asked if the petitioners used the existing driveway whether they would need relief. Mr. White responded that as long as they did not exacerbate the pre-existing non-conformity, in his opinion, no further relief would be needed. Chairman Zuroff stated that it was his understanding that when Section 6.04.14 was approved by Town Meeting, the intent was not to prevent circular drives but more to avoid the “snub nose” homes that have recently proliferated within the community. Mr. Hussey said that in this neighborhood circular drives were not at all uncommon and in his opinion the plan presented offers significant safety upgrades. The Board Members unanimously agreed that the subject to satisfactory conditions, the relief sought by the petitioners met the requirements for the requested relief. The Board also determined, by unanimous vote that the requirements necessary for grant of a variance related to Section 6.04.14 were satisfied.

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

- 1. The circular section of the driveway is not to be used for permanent parking but as an “access drive” only.**
- 2. Prior to issuance of a building permit, the applicant shall submit to the Assistant Director for Regulatory Planning for review and approval a final site plan, stamped and signed by a registered architect and registered land surveyor, indicating all dimensions, including a 12-foot driveway width, all wall heights, the locations of all parking spaces, the adequacy of site lines relative to the driveway entrances and exits, and all paving materials, including an emphasis on porous pavements.**
- 3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; and 2) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.**

Unanimous Decision of

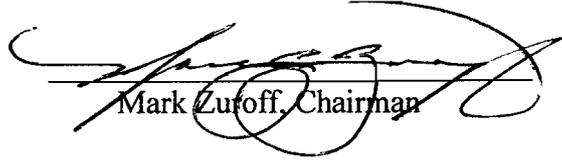
The Board of Appeals

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Meeting Date: April 21, 2010

True Copy

ATTEST:


Mark Zuffo, Chairman



Patrick J. Ward

Clerk, Board of Appeals