



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2210 Fax (617) 730-2248
Patrick J. Ward, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 070051

Petitioners, Milenko and Milijana Beslic, applied to the Building Department for a permit to convert their basement into a residential dwelling unit thereby converting the premises from a three family to a four family dwelling and to reconstruct a multilevel parking structure for six (6) cars on their property at 118 Pleasant Street. The application was denied and an appeal taken to this Board.

On August 23, 2007 the Board of Appeals 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 November 1, 2007 at 7:00 p.m. in Hunneman Hall, Main Library, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, 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 October 11 and 18, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

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: **Milenko and Milijana BESLIC**
Location of Premises: **118 PLEASANT ST BRKL**
Date of Hearing: **11/01/2007**
Time of Hearing: **07:00 p.m.**
Place of Hearing: **Main Library, Hunneman Hall, 2nd fl.**

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

1. **5.05, Conversions; Special Permit Required.**
2. **5.20, Floor Area Ratio; Variance Required.**
3. **5.43, Exceptions to Yard and Setback Regulations; Special Permit Required.**
4. **5.50, Front Yard Requirements; Variance Required.**
5. **5.60, Side Yard Requirements; Variance Required.**
6. **5.61, Projections into Side Yards; Variance Required.**
7. **5.72, Accessory Buildings or Structures in Rear Yards; Variance Required**
8. **5.90, Minimum Landscaped Open Space; Variance Required.**
9. **5.91, Minimum Usable Open Space; Variance Required.**
10. **6.01.2.a, General Regulations Applying to Required Off-Street Parking Facilities; Special Permit Required.**
11. **6.02.1, Table of Off-Street Parking Space Requirements; Variance Required.**
12. **For the Design of All Off-Street Parking Facilities:**
 - 6.04.4.f (one through eight); **Special Permit Required.**
 - 6.04.12; **Special Permit Required.**
13. **8.02.2, Alteration or Extension; Special Permit Required.**

Of the Zoning By-Law to convert the existing basement into a residential dwelling unit thereby converting the premises from a three family to a four family and to reconstruct a multilevel parking structure for six (6) cars per plans at **118 PLEASANT ST BRKL**.

Said Premise located in a **M-1.5**, 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.

**Diane R. Gordon
Harry Miller
Bailey S. Silbert**

Present at the hearing was Chair, Enid Starr and Board Members Bailey Silbert and Jesse Geller. Ms. Starr outlined the procedure by which the hearing would be conducted. The petitioners, Mr. and Mrs. Beslic, were present and represented by their attorney, Stephen J. Buchbinder of Schlesinger and Buchbinder, LLP, 1200 Walnut St., Newton, MA 02461. Also in attendance was Marija Ilic, the project architect, of CYMA-2 Inc., 318 Harvard St., Brookline MA 02446.

Attorney Buchbinder described the site and neighborhood as a three and one-half story, three-unit row house located north of the intersection with Browne Street in Coolidge Corner. Built in 1914, the building is one of seven attached row houses, all with similar architectural details and identical footprints. Five of the row houses, including the subject property, have detached two-car garage structures in the rear, accessed by driveways off of a shared right-of way. The alley is at a grade significantly higher than the backyards of the adjoining properties. The surrounding neighborhood consists of mostly residential uses including single-family, row and two-family houses, as well as multi-family structures. Attorney Buchbinder said that at least four other buildings in the row have basement units similar to the one proposed by the petitioners. Utilizing prepared oversize plans he and the architect described the proposal as having two components; the conversion of the existing basement into a residential dwelling unit and the reconstruction of a multilevel parking

structure for five (5) cars on the property at 118 Pleasant Street. *Note: Although initially cited in the denial letter as parking for six (6) cars and advertised accordingly, the appellants are requesting parking for five (5) cars in the garage structure.* The 1,138 s.f. basement unit would contain two-bedrooms, a combined kitchen/living/dining area and two full bathrooms. Two means of egress would be provided: one through the existing front door for the building, and another by way of a door at the side/rear of the building, leading off the rear stairwell. Two new window wells will be created, one in each of the two proposed bedrooms, to provide building code-compliant egress windows. There will also be a new window created for one of the proposed bathrooms. Attorney Buchbinder said that the petitioners are also proposing to construct a new wooden roof deck, essentially in the middle of the existing roof, which will add 525 s.f. of usable open space to the property. The roof deck will be accessed by a new stairway penthouse available to all the residents of the building. The penthouse will also include storage space for patio furniture.

The existing two-bay cinder block garage would be demolished and a new three-bay garage with rooftop parking would be constructed. The covered portion of the garage would allow for the parking of three vehicles and would be accessed from the lower portion of the existing driveway, which descends approximately 6 feet from the alley grade to the rear of the building. Each of the three garage entry doors will be 8 feet in width. The roof of the garage would allow for the parking of two additional vehicles, which would be accessed from the alleyway and would include an area on top of the garage for storage of trash containers and a landscaped area. The roof would be surrounded by a 42" high parapet wall to screen vehicles and trash barrels from surrounding properties.

Additionally, a sixth parking space for a compact car will be provided behind the building.

The applicant has received a Certificate of Non-Significance from the Brookline Preservation Commission for the demolition of the garage. Attorney Buchbinder said that the relief requested by the petitioners is virtually identical to that received by the owners of 116 Pleasant Street in a previous Decision of the Board of Appeals. (case # 040073)

Attorney Buchbinder said to control drainage on the site, the petitioners are proposing to install a new trench drain at the rear of the proposed garage which will drain to a drywell located at the rear of their building.

Attorney Buchbinder submitted a letter dated 24 October, 2007 by Mark Nielsen, Architect of CYMA-2 Inc., 318 Harvard St., Brookline, MA 02446. The letter addressed concerns of the neighbors regarding a perceived reduction in width of the access drive and the relocation of the existing storm drain on the petitioner's property. The letter advised that the garage proposal will not impact the right of way because the garage will utilize area currently used for the petitioner's trash containers which are on the petitioner's property. Regarding the storm drain, the petitioners are willing to work with their neighbors to resolve the storm drain issue by running a new drain below grade around the new garage to the existing catch basin to the rear of their property. The Chair clarified for those in attendance, that the plan represents no encroachment on the right of way. The architect outlined the route of the new, relocated storm drain.

In terms of counterbalancing amenities, Attorney Buchbinder said that two new trees are proposed, one on either side of the porch and planters are proposed for the upper level of the garage. He said that usable open space will increase from 0% to 7.5% by addition of

the roof deck. The petitioners will be adding two parking spaces and relocating the trash containers to a screened location on the roof deck.

Attorney Buchbinder described the relief required for the project:

Section 5.05 – Conversions

When converting a dwelling to create additional dwelling units in an M District, the Board of Appeals may by special permit waive any dimensional requirements except minimum lot size, provided no previously existing nonconformity to such requirements is increased and all other requirements of the By-law for conversions are met.

Section 5.20 – Floor Area Ratio

	Allowed		Existing	Proposed	Relief
	By Right	By Special Permit			
F.A.R	1.5 (100%)	1.8 (120%)	1.3 (88%)	1.56 (114%)	Special Permit*
Floor Area (s.f.)	6,941	8,329	5,994	7,246	-

* Under Section 5.22.3.b.2 the Board may allow by special permit an interior/exterior addition up to 120% of the permitted gross floor area so long as the maximum allowed FAR of 120% has not been reached.

Section 5.50 – Front Yard Requirements

Section 5.60 – Side Yard Requirements

Section 5.61 – Projections into Side Yards

Section 5.72 – Accessory Buildings or Structures in Rear Yards

Section 5.90 – Minimum Landscaped Open Space

Section 5.91 – Minimum Usable Open Space

Section 6.02.1 – Table of Off-Street Parking Space Requirements

	Required/Allowed	Existing	Proposed	Relief
Front Yard Setback	19.15 feet	11.5 feet	11.5 feet	S.P./Variance**
Side Yard Setback	10.3 feet	4.5-6 feet	4.5-6 feet	S.P./Variance**
Projection into Side Yard	4 feet	0 feet	0 feet	S.P./Variance**
Accessory Buildings in Rear Yards – Setbacks	6 feet	2.2 feet	0 feet	S.P./Variance**
Minimum Landscaped Open Space	10%	7.4%	7.6%	S.P./Variance***
Minimum Usable Open Space	15%	0%	7.5%	S.P./Variance***
Parking Spaces	9	4	6	S.P./Variance****

** Under Section 5.43, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicants have stated counterbalancing amenities at this location will include new landscaping, screening of waste containers, and betterment of aesthetics on the front façade of the building by finishing the ground floor unit.

***Under Section 5.05, when converting a dwelling to create additional dwelling units in an M District, the Board of Appeals may by special permit waive any dimensional requirements except minimum lot size, provided no previously existing nonconformity to such requirements is increased and all other requirements of the By-law for conversions are met.

***Under Section 6.01.2.a, the Board of Appeals may waive up to one half of the required parking spaces when a structure is converted for one or more additional dwelling units.

Section 6.04.4.f (one through 8) – Design of All Off-Street Parking Facilities

To ensure maximum pedestrian safety, the Planning Board and Board of Appeals, with technical input from the Building Commissioner and the Director of Engineering and Transportation, may require one or more of eight safety enhancements designed to ensure adequate sight lines and the safety of pedestrians, as well as other vehicles, as condition for a special permit.**

Section 6.04.12 – Design of All Off-Street Parking Facilities

Under Section 6.04.12 the Board of Appeals may waive dimensional requirements for parking facilities to serve existing buildings.

Section 8.02.2 – Alteration or Extension

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

Jesse Geller asked about the access to and from the upper level of the proposed garage.

The Architect responded that access is by the 10 foot right of way. Mr. Geller stated that he was concerned about the access and Attorney Buchbinder responded by saying that while not ideal, it is representative of the parking conditions in Brookline. Mr. Geller asked about the windows in the new basement apartment. The architect responded that the windows would utilize the existing openings in the basement and would present a more pleasing appearance. Mr. Geller asked for clarification of the location of the property line to the rear of the garage. Attorney Buchbinder said the property line is at the midpoint of the access way running behind the locus and the other row houses and the roof deck is accessible to others.

The Chair asked whether anyone would like to speak in favor or in opposition to the proposal. Lana Wong of 122 Pleasant Street said that she was in support of the petitioner's

proposal but had serious concerns about site access being compromised by the relocation of the garage to the space previously occupied by the trash barrels. She said sight distance will be compromised on an already difficult maneuvering space in the right of way, and that sharp turns were required to access or leave the upper level. She was also concerned about snow removal in that there would be no place to store the plowed snow. Attorney Buchbinder responded by saying that although the garage will be larger, there is no encroachment on the right of way. The space for the expanded garage was previously used for the storage of trash barrels he said his clients were removing one of the existing parking spaces to the rear of their property to help with the access to and from the right of way. The Chair stated that she had been to the site and appreciates the tightness of the situation.

Lara Curtis, Planner, said that The Planning Board has no objections to this proposal to convert an existing basement into a residential dwelling unit and reconstruct a multilevel parking structure for five (5) cars at 118 Pleasant Street. The proposed alterations to the building exterior to create the additional unit are minimal, and the addition of a roof deck and additional landscaping brings the property closer to compliance in terms of usable open space and landscaped open space, respectively. Required relief for this project represents a minor departure from existing conditions, and the Planning Board is pleased that the applicants and their architect designed the project so that all of the relief may be granted by special permit. Ms. Curtis said that the proposed two-tiered garage configuration emulates the creative parking solution employed on the abutting property at 116 Pleasant Street, and allows for waste containers to be screened from view. The Board appreciates that the applicant has worked with Planning Staff to increase the size of the garage door openings

to allow for better ingress/egress into the parking spaces. The Board also appreciates the rooftop parking on the garage has been redesigned to allow for a more gradual slope of 5.4%. Ms. Curtis said that the Planning Board recommends approval of the plans titled "Basement Conversion at 118 Pleasant Street" prepared by Mark Jens Nielsen of CYMA 2, Inc., and last dated 10/01/07, and the site plan, prepared by VTP Associates, Inc. and last dated 06/22/07, subject to the following conditions:

1. **Prior to issuance of a certificate of occupancy, the parking spot at the rear of the building shall be striped or otherwise delineated.**
2. **Prior to issuance of a building permit, the applicant shall submit a final landscaping plan, indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.**
3. **Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator 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 elevations of the building and garage, stamped and signed by a registered engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

The chair then called on Frank Hitchcock representing the Building Department. Mr. Hitchcock described the project for the Board and stated that on his visit to the site he had little difficulty maneuvering with his compact, town owned, vehicle. He said that, in his opinion, a larger vehicle could have difficulty moving about the area. He described the relief required for the proposal. A special permit under Section 5.05 is required because a conversion to create additional units in the M district allows the Board to waive dimensional requirements except lot size, provided no previously existing nonconformities are increased and all other requirements for conversion under the By-law are met. A

special permit under Section 5.22.3.b.2 is required because the Board may allow up to a 20% increase in gross floor area for an interior/exterior addition provided the maximum allowed FAR of 120% has not been reached. A special permit under Section 5.43 allows the Board to waive yard and setback requirements providing counterbalancing amenities are provided. Mr. Hitchcock said that a special permit under Section 6.01.2.a allows the Board to waive up to one half the required parking spaces when a structure is converted for additional dwelling units. Section 6.04.12 allows the Board to waive dimensional requirements for parking facilities to serve existing buildings. Because the structure is pre-existing, non-conforming, a special permit is required under Section 8.02.2 of the By-law. Mr. Hitchcock said that as a condition of a special permit the Board under Section 6.04.4.f, with input from the Building Commissioner and Director of Engineering and Transportation, may impose safety enhancements to ensure adequate sight lines and the safety of pedestrians, as well as other vehicles. Mr. Hitchcock stated that the Building Department had no issue with the relief required for the project or the conditions proposed by the Planning Board.

The Chair inquired of the petitioners whether they would have any objection to an additional condition, if relief were granted, requiring the Town Engineer's approval of the design of the relocated storm drain. Attorney Buchbinder said that they would have no objection to such a condition. Bailey Silbert commented that it is nice to have a prior example, #116 Pleasant Street, to serve as a clever solution to a parking problem. Jesse Geller stated that he had no issue with the added dwelling unit. He said he had reservations about the traffic trying to negotiate the right of way, particularly during inclement, snowy,

weather. He said not only is there vehicular movement but at least two people will have to negotiate the sloped right of way on foot as well. He spoke of potential safety enhancements including a handrail attached to the side of the garage, some lighting and the installation of a non-slip surface on the pedestrian portion of the slope. The petitioners stated that they would have no issue with a condition requiring the aforementioned safety enhancements. The Chair noted that the Board endeavors to be consistent and since a virtually identical proposal was granted on an adjacent parcel she could see no reason not to grant the requested relief. The additional size of the garage, since it will occupy space previously taken by trash barrels, is de minimus.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that is desirable to grant special permits under Sections 5.05, 5.22.3.b.2, 5.43, 6.01.2a, 6.04.12 and 8.02.2 of the Zoning Bylaw. The Board made the following findings pursuant to 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. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Therefore, the board voted unanimously to grant all the Special Permit relief with the following conditions:

1. Prior to issuance of a building permit, final elevations of the garage addition shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit a design for the relocated storm drain shall be submitted to the Town Engineer for review and approval.
3. Prior to the issuance of a building permit a plan, stamped and signed by a registered architect showing safety enhancements including lighting, a non-slip walking surface and a handrail, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
4. Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator 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 elevation plans, 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


Enid Starr

Filing Date: November 15, 2007

A True Copy:

ATTEST



Patrick J. Ward

Clerk, Board of Appeals

RECEIVED
TOWN OF BROOKLINE
REGISTRARS OF VOTERS
07 NOV 15 PM 5:23