



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Co-Chair
Jonathan Book, Co-Chair
Christopher Hussey

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. 2014-0032
Owner: Anton Garcia-Abril**

Petitioner, Anton Garcia-Abril, applied to the Building Commissioner for permission to convert a single-story, single-family residence, located at 37 Franklin Street, to a two-story single-family residence. 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 September 4, 2014 at 7:30 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 their attorney 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 August 14, 2014 and August 21, 2014 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:

37 FRANKLIN STREET– CONSTRUCT A SECOND STORY ON AN EXISTING SINGLE-FAMILY, SINGLE-STORY BUILDING in an M-1.0, Apartment House residential district, on

September 4, 2014, at 7:30 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner: ANTON GARCIA-ABRIL; Owner: ANTON GARCIA-ABRIL)

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

- 1.Section 5.10: Design Review**
- 2.Section 5.15.2: Exception to Minimum Lot Size and Lot Width Requirements**
- 3.Section 5.43: Exceptions to Yard and Setback Regulations**
- 4.Section 5.60: Side Yard Requirements**
- 5.Section 5.70: Rear Yard Requirements**

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 Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneirson@brooklinema.gov.***

*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

Publish: August 14, 2014 & September 21, 2014

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Jonathan Book and Board Members Avi Liss and Christopher Hussey. The case was presented by the attorney for the petitioner, Michael W. Merrill, Merrill & McGeary, 100 State Street, Suite 200, Boston, Massachusetts, 02109. Also in attendance was the petitioner, Anton Garcia-Abril. Mr. Book called the meeting to order at approximately 7:10pm.

Mr. Merrill described 37 Franklin Street as a single-family home located on Franklin Street between Rice and Roberts Streets. The neighborhood is comprised of all residential single-family and multi-family dwellings that are generally larger in overall size than the residence to be considered. A large apartment building exists to the rear of the property.

Attorney Merrill stated that in 2009 the Board of Appeals granted approval to convert the property which was a commercial garage into a single family home with a second story. The project was never built and the relief expired in March, 2010. In 2012, the Board of Appeals again granted approval to convert the property into a single family residence, however at the time the petition was only for a single story dwelling. Shortly thereafter, a single family residence was built on the site.

Attorney Merrill said the petitioner is proposing to construct a second story on the existing footprint at a proposed height of 32.25 feet tall, an increase of approximately 17 feet. Attorney Merrill noted that the property was once a garage and the addition of the second story will complete the transformation of the property from a commercial garage into a residential home as envisioned in 2009. Additional landscaping in the form of replacement plants and shrubs more

suitable to the property and the neighborhood will serve as the counter-balancing amenity as required for the issuance of a Special Permit. Attorney Merrill said that this conversion is appropriate and would not adversely affect the neighborhood.

The Chairman asked if anyone in attendance would like to speak, either in favor of or in opposition to the petition. There were no members of the public present to speak either in favor of or against the application.

The Chairman called upon Lara Curtis Hayes to deliver the comments of the Planning Board:

FINDINGS

Section 5.10 – Minimum Lot Size: The Board of Appeals granted relief for minimum lot size through case #2012-0021. The Planning Board does not feel that the applicant requires relief from this section for this proposal.

Section 5.15.2 – Exception to Minimum Lot Size and Lot Width Requirements: The Board of Appeals granted relief for minimum lot size through case #2012-0021. The Planning Board does not feel that the applicant requires relief from this section for this proposal.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

	Required	Existing	Proposed	Finding
Side Yard Setback	7.5 feet	5.9 feet	5.9 feet	Special Permit*
Rear Yard Setback	30 feet	3.2 feet	3.2 feet	Special Permit*

*Under Section 5.43, the Board of Appeals may allow by special permit alternate dimensions for setback and yard requirements if counterbalancing amenities are provided.

Modification, as necessary, of BOA decision #2012-0021, April 19, 2012

Ms. Curtis Hayes reported the Planning Board is supportive of this proposal to grant setback relief for the applicant to construct an addition above the existing one-story dwelling. The Board has reservations with the design of the second-story addition and would like the applicant to return before the Planning Board with a revised design and more detail with regard to the sections of the proposed addition, showing ceiling height.

Therefore, the Planning Board recommends approval of the site plan (Page A0) by

Osborn+ Studio and dated 8/15/14, subject to the following conditions:

1. Prior to issuance of a building permit, final plans and revised elevations with window details and a section, shall be submitted to the Planning Board for review and approval.
2. Prior to issuance of a building permit, a final landscaping plan shall be submitted to the Planning Board for review and approval.
3. 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 engineer or land surveyor; 2) final floor plans and 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 relief could be issued by special permit and satisfactory counterbalancing amenities have been proposed. Mr. Yanovitch said if relief were to be granted the Building Department would ensure compliance with the Building Code as well as any conditions of the grant.

After deliberating on the merits of the request for special permit relief, The Board voted unanimously that the requirements have been met for the issuance of a special permit under Section 5.43 of the Zoning By-Law. The Board made the following specific 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.

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

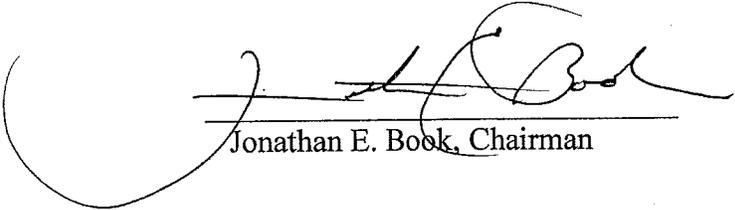
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Unanimous Decision of

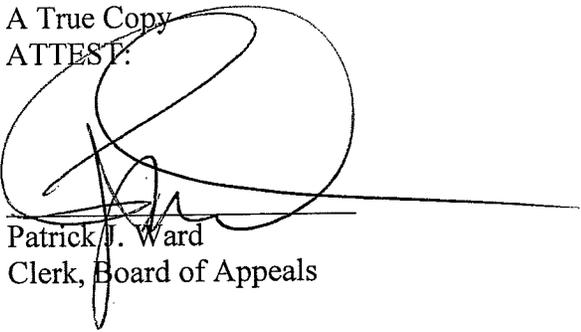
The Board of Appeals

Filing Date:

11/4/14


Jonathan E. Book, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

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