



BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2015-0034
OWNER: MILDRED ANDERSON, TRUSTEE OF THE
ENGLISH ROSE NOMINEE REALTY TRUST

Petitioner, Mildred Anderson, Trustee of the English Rose Nominee Realty Trust c/o Attorney Michael J. Burkin, applied to the Building Commissioner for permission to construct a common driveway to serve five lots at 21-39 Sears Road. 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 July 30, 2015 at 7:15 p.m. in the Selectmen's Hearing Room as the time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, 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 July 9, 2015 and July 16, 2015 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:

21-39 SEARS RD – INSTALL A COMMON DRIVEWAY in an S-40, Single-Family, residential district, on July 30, 2015, at 7:15 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner: Michael J. Burkin; Owner: ANDERSON, TR MILDRED) Precinct 15

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and other zoning relief as needed:

- 1. Section 6.04.4.b: Design of All Off-Street Parking Facilities (Driveway Width)**
- 2. Section 6.04.5.e: Design of All Off-Street Parking Facilities (Common Driveway)**

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

*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

Publish: July 9, 2015 & July 16, 2015

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Board Chairman Jesse Geller and Board Members Johanna Schneider and Jonathan Book. Attorney Michael J. Burkin of The Law Office of Michael J. Burkin, located at 171 Milk Street, Boston, MA, presented project details to the Board. Attorney Burkin stated that the petitioner is seeking to install a common driveway off of Sears Road to service five separate lots. Zoning relief is required to establish the common driveway itself and for the minimum driveway width of 18 feet.

Attorney Burkin suggested that Section 6 of the Zoning By-Law encourages common driveways as a strategy to reduce curb cuts, minimize impact, and reduce the need for additional pavement. The subject properties were subdivided in 2013, with lot sizes ranging from 1.2 acres to 3 acres. Current zoning requirements would allow for the construction of five single-family homes and five individual driveways for these lots. In Attorney Burkin's opinion, this proposed common driveway is a far less impactful option for the neighborhood. Additionally, the proposed common driveway will utilize an existing curb cut at Sears Road. Attorney Burkin confirmed that the Planning Board unanimously supported the common driveway proposal following two public meetings, and both the Fire Chief and Department of Public Works staff are satisfied with property access and drainage, respectively. The common driveway location was also moved away from abutting properties along Lee Street based on resident and Planning Board recommendations.

Attorney Burkin provided an existing photo of the driveway access point to illustrate that the streetscape will not be significantly altered, aside from additional plantings, fence repair, and a new cobblestone driveway apron. An existing farmhouse on the property will be razed and the existing single-family home at 39 Sears Road will not be accessed from this common driveway. Attorney Burkin reviewed the potential single-family home configurations and locations by incorporating yard setback and wetland buffer requirements within the existing site plan. Driveway, drainage, and no access easements are also required to be filed with the Registry of Deeds. Attorney Burkin confirmed that no additional points of egress for these properties can be established outside of the proposed common driveway.

The common driveway will be maintained by a homeowners association and will be 18 feet wide at the most narrow point and expands to over 20 feet wide to allow for effective emergency vehicle turnaround.

Landscape Architect Chris McFarlane, of Landworks Studios, described proposed landscaping alterations, site screening, and drainage. Roughly 12 trees will be removed to reconfigure the driveway location and 60 new trees and 100 shrubs will be installed to improve the buffer between Lee Street properties and offset the loss of canopy cover. All installed features are native and many already exist in the immediate area. Mr. McFarlane also described installation of stone columns to mark the drive entry at the curb cut and low-light bollards along the driveway.

Board Member Schneider questioned if installed trees will adequately replace removed mature trees. Mr. McFarlane responded that installed trees will be fairly large caliber but do require long-term growth to mimic existing mature trees.

Board Chairman Geller questioned if any trees slated for removal are visible from Sears Road. Mr. McFarlane confirmed that the mature tree canopy along Sears Road will not be altered.

Board Member Schneider questioned the approximate width of the new landscaped buffer between the subject properties and lots along Lee Street. Mr. McFarlane stated that the former driveway buffer would be approximately 15-20 feet wide.

Mr. McFarlane further described two primary water management focus areas for the site. Two small detention areas will be located near the front gate and near the wetlands area at the southwest portion of the property. A retention swale will be installed for further wetlands protection. Drainage easements will also be established to maintain these elements. Mr.

McFarlane concluded his comments by reiterating that the Department of Public Works had significant review of this drainage plan, and the Fire Chief is satisfied with the overall driveway design.

Board Member Schneider questioned if it was the petitioner's intent to construct five new single-family homes. Attorney Burkin confirmed that no more than five single family homes can be constructed. This is enforced by zoning regulations and trust restrictions.

Attorney Burkin believed that the proposal before the Board adequately satisfies special permit standards outlined in Zoning By-Law Section 9.05 because the design is far less detrimental to the neighborhood, abutter impact is minimized, and adequate visual screening and facilities are provided.

Board Chairman Geller called for public comment in favor of, and in opposition to, the petitioner's proposal.

No members of the public spoke in favor of the proposal.

Robert Allen, of 300 Washington Street, stated that he represents a group of eight neighbors, the majority of whom are immediate abutters to this project. Attorney Allen agreed that the driveway layout is improved from the initial proposal but felt that it is premature to grant relief for a common driveway without a clear plan for the development of single-family structures on these lots. Attorney Allen believed that various layouts or developers could result in the need to amend this relief if granted. Attorney Allen also suggested that the Board impose conditions that require Planning Board design review of all homes constructed on these lots. There is a general understanding of buildable area on these lots but the drainage impact is still unknown. Future Town oversight is recommended, particularly because clearly articulated use of these individual properties is uncertain.

Joseph Freeman, of 346 Lee Street, supported Attorney Allen's comments and further stated the importance of drainage oversight. Mr. Freeman highlighted property slopes that already generate significant water runoff toward wetlands and Lee Street properties.

Stewart Silverman, of 330 Lee Street, favored this modified driveway location over the original but was unsatisfied with the proposed scale of landscaped buffering. Mr. Silverman noted that noise and activity during construction was a concern for abutters in addition to inadequate visually screening. Mr. Silverman also concurred with previously stated drainage concerns.

Board Chairman Geller requested additional details regarding the density, height, and type of plantings that will face the abutting Lee Street properties.

Mr. McFarlane stated that installed trees will be 14 to 18 feet tall and are intended to fill gaps between existing trees. These trees will certainly grow in height over time. American Holly and Evergreen trees will also provide year-round visual screening.

Board Chairman Geller requested that Jay Rosa review the findings of the Planning Board.

FINDINGS

Section 6.04.4.b – Design of All Off-Street Parking Facilities (driveway width)

A special permit is required if a two way driveway serving more than six cars is less than 20 feet. In this case, the driveway ranges from 18 feet to 25 feet.

Section 6.04.5.e – Design of All Off-Street Parking Facilities (Common Driveway)

A special permit is required for a common driveway.

Mr. Rosa stated that the Planning Board unanimously recommended approval of the common driveway off of Sears Road. The driveway was relocated away from the property line in an effort to reduce the impact on abutters and significant landscaping will be provided as a

counterbalancing amenity. Proposed plans have been approved by the Fire Department for adequate emergency access and DPW for adequate drainage. The Planning Board was also satisfied that the driveway configuration minimizes the disruption of existing vegetation as much as possible but did recommend the submission of individual lot setback analysis to determine where single-family homes can be located on each lot, which the petitioner has presented to the Board.

Therefore, the Planning Board recommended approval of the site plan by Dunn McKenzie, Inc., dated 9/15/14, and the landscaping plan by Landworks Studio, dated 5/15/15, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, showing the common driveway and lighting fixtures, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit for the common driveway, the applicant shall submit a final scaled landscaping plan, including topography, fences and walls, a protection plan for the landscaping to be preserved, elimination of the existing driveway, and a repaired or replaced fence along Dale Street, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit for any new home on these lots, a drainage plan shall be submitted subject to the review and approval of the Director of Traffic and Engineering, with a copy of the approved plan submitted to the Planning Department.
4. There shall be no vehicular access to or from Dale Street from any of these lots.
5. 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) evidence that the common driveway mutual easements and covenants, and the Board of Appeals decision have been recorded at the Registry of Deeds.

Board Chairman Geller requested that Mr. Rosa also deliver the opinion of the Building Department. Mr. Rosa stated that the Building Department also has no objection to the requested relief. There are no driveway grade issues and relief is solely required for the common drive

itself and the 18 foot width, which has been endorsed by the Fire Chief. The Building Department also supports the recommended condition requiring drainage plans for each lot prior to any new construction. The submission of setback analysis for each individual lot does appear to be beyond the scope of this proposal. Standard Building Department procedure is to evaluate zoning conformity if and when plans for new single-family homes are submitted. Should the Board find that the standards for special permit relief are met the Building Department will work with the petitioner to ensure compliance with all imposed conditions and codes.

Board Chairman Geller questioned if the Planning Board considered the specific inclusion of fire safety provisions provided by the Fire Chief as a special permit condition. Mr. Rosa confirmed that the Planning Board and the petitioner supported the recommendations from the Fire Chief but a special permit condition was not established.

Board Member Book questioned if residential sprinklers are required by State Fire or Building Codes. Mr. Rosa stated that they are not but the Fire Chief commonly recommends residential sprinklers for common driveway projects such as this.

Attorney Burkin agreed that flexibility is provided for future single-family home design, but the driveway layout does dictate where individual driveways can be located. Lot 18 is perhaps the only lot that does have flexibility in terms of private driveway location. The only unknown is whether or not the maximum of five homes will actually be developed. Attorney Burkin concluded his comments by stating that DPW thoroughly reviewed drainage plans and are satisfied with the proposal before the Board.

The Board deliberated on the merits of special permit relief as requested. Board Member Schneider stated that the relief request before the Board is solely for the common driveway. The ANR subdivision was approved and no design review of new single-family residential structures

in this district is required if compliant with zoning regulations. Any future residential development on these lots will be required to come back before this Board if zoning non-compliance issues do arise. Ms. Schneider believed that the Board should focus on the special permit relief standard for the common driveway only. The petitioner has made accommodations by moving the shared driveway away from abutting lots and installing significant landscaped screening. Ms. Schneider believed that the standard for special permit relief has been met and was in favor of granting requested relief.

Board Member Book concurred and stated that the petitioner is not required to install further screening to offset potential future residential development, particularly if that development is done as-of-right. Mr. Book also felt that single-family structure locations are generally understood based on the buildable area and common driveway end points. Mr. Book did recommend that the Board impose conditions to enforce the Fire Chief's recommendations and provide the Building Commissioner with the right to require a construction management plan, particularly if multiple homes are to be constructed concurrently. Mr. Book concluded that the project is worthy of relief, subject to conditions as modified.

Board Chairman Geller noted that analysis of the full extent and benefit of the drive is less definitive because the plans for the houses and other improvements are not included, however, the relief request before the Board is for the common driveway with a clear understanding of buildable area for up to five single-family homes. Abutters have acknowledged that the current driveway layout represents an improvement and Mr. Geller believed that the common driveway is the most appropriate option for this site if it is to be further developed. Mr. Geller supported permit condition modifications and believed that subject to those modifications the project is worthy of the special permit relief.

The Board voted unanimously that the requirements have been met for the issuance of a special permit under **Section 9.05** of the Zoning By-Law, granting relief from the provisions of **Sections 6.04.4.b** and **6.04.5.e** of the Zoning By-Law. The Board made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law.

- The specific site is an appropriate location for such a use, structure, or condition.
- The use as developed will not adversely affect the neighborhood.
- There will be no nuisance or serious hazard to vehicles or pedestrians.
- Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- 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 voted unanimously to grant special permit relief, subject to the following revised conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, showing the common driveway and lighting fixtures, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit for the common driveway, the applicant shall submit a final scaled landscaping plan, including topography, fences and walls, a protection plan for the landscaping to be preserved, elimination of the existing driveway, and a repaired or replaced fence along Dale Street, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit for any new home on these lots, a lot-specific drainage plan shall be submitted subject to the review and approval of the Director of Traffic and Engineering, with a copy of the approved plan submitted to the Planning Department.
4. There shall be no vehicular access to or from Dale Street from any of these lots.

5. The project shall comply with the recommendations made by the Town of Brookline Fire Chief in his letter dated August 19, 2014, including without limitation: (i) installation of residential sprinklers in all single-family structures that are accessed by the common driveway, in accordance with N.F.P.A 13 standards for the installation of sprinklers; (ii) the common driveway shall be no less than 18 feet wide at any point, and constructed to support the maximum weight of fire apparatus, provide sufficient turning radius for all emergency vehicle access at Sears Road and interior turnaround, and clearly mark the "grasspave" surface area for vehicular use; and (iii) the Fire Department will forever be released from liability for any damage caused to the driveway which may result while in the performance of its duties.

6. The Building Commissioner may require the submission and approval of a construction management plan if deemed necessary by the Building Department based on the scale and/or nature of construction work on any one or more of the lots.

7. 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) evidence that the common driveway mutual easements and covenants and the Board of Appeals decision have been recorded at the Registry of Deeds.

Unanimous decision of the
 Board of Appeals

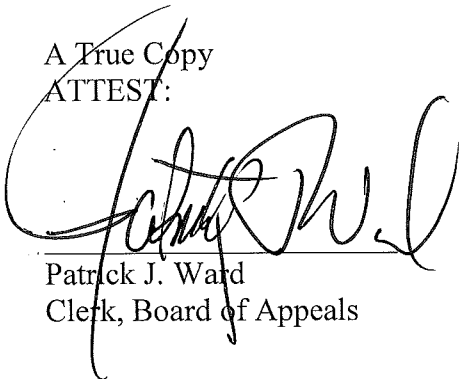
Filing Date: _____

9/09/15



 Jesse Geller, Chairman

A True Copy
 ATTEST:



 Patrick J. Ward
 Clerk, Board of Appeals

2015 SEP -9 PM 2:58

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