



BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

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. 2015-0028
OWNER: THE SUMMIT AVENUE TRUST C/O
DORTHY C. HENDRICK, TRUSTEE
29 SUMMIT AVENUE, BROOKLINE, MA

Petitioner, Kenwood Builders c/o Boris Kutikov, applied to the Building Commissioner for a permit to reconstruct a surface parking area, install a front-facing garage at the basement level, install a rear staircase, and construct a rear addition at 29 Summit Avenue. 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 certified by the Board of Assessors of the Town of Brookline and fixed August 27, 2015 at 7:15 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for 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 13, 2015 and August 20, 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:

29 SUMMIT AVE – INSTALL AN EXTERIOR SPIRAL STAIRCASE AT THE REAR, in a T-5, Two-Family and Attached Single-family, residential district, on August 27, 2015, at 7:15 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner: Kenwood Builders c/o Boris Kutikov; Owner: The Summit Avenue Trust c/o Dorothy C. Hendricks, Trustee) Precinct 11

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

- 1. Section 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.60: Side-Yard Requirements**
- 3. Section 5.70: Rear-Yard Requirements**
- 4. Section 8.02.2: Alteration or Extension**

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*

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jesse Geller, and Board Members Christopher Hussey and Avi Liss. The case was presented by project engineer Frederick Lebow of FSL Associates, 358 Chestnut Hill Avenue, Boston, MA. Mr. Lebow stated that the existing two-family structure at 29 Summit Avenue was “gutted” and the Petitioner intends to renovate the property. This renovation will also include the installation of an exterior rear staircase to serve as a second means of egress, a rear addition to expand interior living space, and the installation of a single-car garage located at the basement level.

Board Members commented that project plans submitted to the Board were incomplete because they did not include a definitive final parking layout or the resulting maximum height of the structure upon completion of the proposed modifications. Similar concern was expressed in a Planning Department memorandum to the Board. Board Chairman Geller stated that the proposal was premature for Board of Appeals review.

Mr. Lebow requested that the Board continue this hearing so that project plans may be adequately revised and reviewed by Planning Department staff members. The Board unanimously granted this request for continuance to October 29, 2015. Chairman Geller also requested that public notice for that hearing be provided in accordance with G.L. c. 40A requirements.

Accordingly, public notice of this continued 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 October 15, 2015 and October 22, 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:

29 SUMMIT AVE – ADD 1591 SQUARE FEET OF FLOOR AREA AND ADD ONE PARKING SPACE in a T-5, Two-Family and Attached Single-Family, residential district, on

October 29, 2015, at 7:10 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner: Kenwood Builders; Owner: HEDRICK, TR DOROTHY C) Precinct 11

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

- 1. Section 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.60: Side-Yard Requirements**
- 3. Section 5.70: Rear-Yard Requirements**

4. Section 6.04.5.c.1: Design of All Off-Street Parking Facilities
5. Section 6.04.12: Design of All Off-Street Parking Facilities
6. Section 8.02.2: Alteration or Extension

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*

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jesse Geller, and Board Members Christopher Hussey and Jonathan Book. Chairman Geller stated for the record that this case was continued from August 27, 2015. Sitting Board Members at that previous hearing were Jesse Geller, Christopher Hussey, and Avi Liss. Currently, Jonathan Book is sitting in place of Avi Liss. Mr. Geller cautioned the Petitioner's representative, Project Engineer, Fredrick Lebow of FSL Associates, 358 Chestnut Hill Avenue, Boston, MA, that should the Board approve the requested relief this may render the decision ineffective or provide a basis for an appeal.

Mr. Lebow stated that project plans were revised from the prior hearing and, as such, the proposal will be presented in totality. Mr. Lebow stated that he understood any risks and wished to proceed with the public hearing and Zoning Board evaluation and decision at this time rather than continue the hearing further. Mr. Lebow also waived the reading of public hearing notice for the record.

Mr. Lebow stated that significant demolition of the structure located at 29 Summit Avenue has already occurred and only the foundation and shell exterior remain. Mr. Lebow stated that the structure consisted of two residential units and a surface driveway along the eastern lot line that provided tandem parking for four vehicles. The Petitioner is now proposing to construct two condominium units, a basement level garage for a single vehicle, and tandem surface parking for three vehicles. Mr. Lebow confirmed that a proposed exterior staircase at the rear of the structure will provide a second means of egress and a proposed 2 ½ story addition at will “square off” a portion of the structure at the rear and create additional living area. Mr. Lebow also stated that the entry driveway to the proposed basement level garage will maintain a 10% slope, which is consistent with the existing driveway and complies with state and local building codes. Mr. Lebow confirmed that dormer ridge lines will be reconfigured but the pre-existing non-compliant maximum height of the structure (39.92 feet) will not be altered. Mr. Lebow further stated that the garage is intended to reduce tandem parking at the site and will include a rollup door that provides seven feet of clearance. Mr. Lebow stated that in order to accomplish this design, interior floor heights will be altered rather than modifying the driveway grade and maximum height of the structure.

Mr. Lebow believed that the proposal before the Board was revised in a manner that reduces to a minimum required zoning relief. He commented that special permit relief is required for both rear and side yard setbacks resulting from the proposed rear additions, and the front-yard setback resulting from the proposed front facing garage door and one of the surface parking spaces that will be located within the required front-yard.

Mr. Lebow concluded his comments by confirming that the Planning Board recommended approval of the revised project plans that were submitted prior to these roof height

and driveway slope revisions by a 4-2 vote. Mr. Lebow also stated that the proposal before the Board satisfies the standards for the grant of a special permit in accordance with By-Law Section 9.05 because:

- 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 of the proposed use
- The development as proposed will not have a significant adverse effect on the supply of housing available to low and moderate income people

Board Member Hussey questioned the feasibility of the interior floor reconfiguration and requested additional detail regarding window design that is inconsistent with the existing front façade.

Project Architect Beth McDougal, of McDougal Architects confirmed that interior floors have already been removed. Several front facing windows were reduced in size because they provide light for staircases and bathrooms. Ms. McDougal further stated that Planning Board comments regarding the “balance” of the front porch were incorporated into plans currently before the Board. Ms. McDougal finally confirmed that the proposed garage width is eight feet.

Chairman Geller stated that functional problems often arise when tandem parking spaces are provided for multiple residential units. Mr. Geller asked the Petitioner to further explain how the proposed parking layout will operate.

Mr. Lebow stated that the prior parking configuration included three parking spaces for the multi-bedroom unit and one parking space for the single-bedroom unit. The Petitioner

intends to maintain the garage parking space for one residential unit and the surface parking spaces for the other.

Chairman Geller and Member Book stated skepticism in the ability to enforce this intended parking configuration and specifically prevention of parking of an additional vehicle within the driveway area located in front of the garage and in the front yard but did agree that the parking count and configuration represent pre-existing conditions.

Board Member Hussey also stated that the Zoning By-Law includes parking requirements based on bedroom per unit counts in order to generate a cumulative parking requirement. There is no definitive language within the Zoning By-Law detailing how required parking must be allocated among dwelling units.

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

Gail Fenton of 22 Atherton Road requested clarification as to the size of rear additions, specifically the resulting setbacks because she is an abutter in that immediate area. Ms. Fenton expressed concern that vehicles intended to park in a tandem manner may alternatively park in the rear yard area behind the structure. Ms. Fenton also suggested that drainage is already an issue for the property and therefore the Petitioner's proposal should incorporate better drainage and snow storage and removal measures.

Mr. Lebow confirmed that the resulting rear-yard setback facing Ms. Fenton's property will be 17.3 feet at the closest point. Mr. Lebow stated that the current rear-yard setback is 18.4 feet and he believed that a substantial portion of the existing rear-yard will be maintained. Mr. Lebow also stated that a trench drain will be installed at the front of the garage and will drain water into a dry well located in the rear yard.

Board Member Book requested that the Petitioner further detail paving material for the parking area and the driveway providing access to the garage.

Mr. Lebow stated that both the parking surface and the adjoining garage access driveway will be constructed of asphalt. Pavers will also be included at the front of the garage and an existing catch basin will be maintained at the end of the driveway parking surface.

Chairman Geller noted that sufficient rear yard space will remain, particularly for snow storage. Mr. Geller also noted that submitted plans indicate that the driveway parking surface will not extend into the rear yard behind the structure.

Chairman Geller requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board and Building Department.

FINDINGS

Section 5.01, Footnote 1: Table of Dimensional Requirements

Section 5.60: Side Yard Setback

Section 5.70: Rear Yard Setback

Section 6.04.5.c.1: Design of all off-street parking facilities

Section 8.02.2: Alteration or Extension

Dimensional Requirements	Existing	Required / Allowed	Proposed	Finding
Side-yard setback (left)	5.5 ft	10 ft	5.5 ft to new exterior stairs	Special Permit / Variance*
Section 5.70 Rear yard setback	31 ft to area of proposed stairs; 18.4 ft to area of infill addition	30 ft	17 feet to new infill addition 24 feet to new exterior stairs	Special Permit / Variance*
6.04.5.c1 Garage entrance setback from street lot line	NA	Street-facing garage entrance 20 feet from street lot line.	19.3 feet from street lot line	Special Permit**

* **Section 5.43:** The Board may waive setback requirements if counterbalancing amenities are offered.

*****Section 6.04.12:** The Board may permit in lieu of the dimensional requirements of this section, the substitution of other requirements provided that such substitution is necessary.

Mr. Rosa stated that the Planning Board supported this request to install a front garage, rear addition, and rear staircase with a 4-2 vote. Planning Board members recommended that the grade change of the garage entry drive be reduced and requested that the Petitioner work with the Planning Department to determine the most appropriate building height calculation methodology. Revised plans include a 10% driveway slope, which is code compliant, and no increase in the maximum building height. Therefore, the Planning Department recommended approval of the architectural plans submitted by Beth McDougal of McDougal Architects, dated October 8, 2015, and the site plan submitted by registered land surveyor Verne T. Porter, dated April 14, 2015 and revised October 7, 2015, subject to the following conditions:

1. Prior to the issuance of building permit, the applicant shall submit a final site plan, elevations, and floor plans subject to the review and approval of the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating parking layout, paver materials for the driveway, and all counterbalancing amenities, subject to the review and approval of the Assistant Director for Regulatory Planning.
3. 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) final floor plans and elevations stamped and signed by a registered architect; 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Rosa further stated that the Building Department also had no objection to the relief as requested. The Department commends the petitioner for working closely with staff members to effectively revise submitted plans. Ultimately, it was not feasible to reduce the driveway grade change without elevating the entire structure, which would require a variance and is probably far more impactful on the neighborhood from a visual and construction timeline standpoint.

The Board deliberated on the merits of special permit relief as requested. Board Member Hussey stated support for the proposed modifications to both the structure and parking layout.

Board Member Book concurred with Mr. Hussey's comment but stated that he was troubled by the impact that tandem parking will have on residents and passing vehicles along Summit Avenue.

Chairman Geller stated that the current parking layout is an improvement from the prior tandem parking spaces for four vehicles. Mr. Geller noted that the proposal for tandem parking would be relevant to the Board's evaluation under of **Section 9.05** of the Zoning B-Law if there is an adverse impact on vehicles or pedestrians but the Board would not typically consider the allocation of individual parking spaces within the building. Mr. Geller commented in particular that the Board would not necessarily be in favor of tandem parking at the site if the pre-existing status was not established. Mr. Geller also noted his concern with the potential for parking of an additional vehicle illegally within the area located in front of the garage.

Board Members agreed that the existing catch basin and the proposed trench drain adequately address abutter concerns but supported the revision of proposed conditions to include the submission and approval of a final site plan that includes contours and drainage.

The Board voted unanimously that the requirements have been met for the issuance of a special permit under **Sections 5.43, 6.04.12, and 9.05** of the Zoning By-Law, granting relief from the provisions of **Sections 5.01, Footnote 1, 5.60, 5.70, 6.04.5.c.1, and 8.02.2** 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.

Accordingly, the Board voted unanimously to grant special permit relief, subject to the following revised conditions:

- 1. Prior to the issuance of building permit, the applicant shall submit a final site plan, elevations, and floor plans subject to the review and approval of the Assistant Director for Regulatory Planning.**
- 2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating parking layout, paver materials for the driveway, and all counterbalancing amenities, subject to the review and approval of the Assistant Director for Regulatory Planning.**
- 3. Prior to the issuance of a building permit, the applicant shall submit a final site plan including grading, contours, and drainage, subject to the review and approval of the Director of Transportation and Engineering.**
- 4. 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) final floor plans and elevations stamped and signed by a registered architect; 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Unanimous decision of the
Board of Appeals

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

2015 DEC - 8 5 11:05

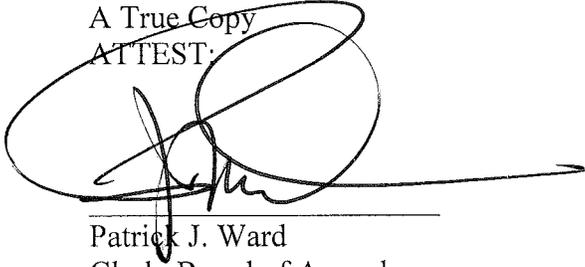
Filing Date:

12/8/15



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals