



BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2015-0070
DANIEL JURAYJ & KATHARINE SILBAUGH
68 AMORY STREET, BROOKLINE, MA

Petitioners, Daniel Jurayj and Katharine Silbaugh, applied to the Building Commissioner for permission to construct a single-car garage in the rear and side yard setback. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed February 18, 2015 at 7:00 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, to their 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 February 4, 2016 & February 11, 2016 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:

68 AMORY ST – CONSTRUCT A DETACHED GARAGE IN THE REAR AND SIDE YARDS in an SC-7, Single-Family and Converted for Two-Family, residential district, on

**February 18, 2016, at 7:00 PM in the 6th Floor Selectmen's Hearing Room
(Petitioner/Owner: JURAYJ DANIEL H & SILBAUGH KATHARINE) Precinct 1**

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

- 1. Section 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.71: Projections into Rear Yards (8' min from deck)**
- 3. Section 5.72: Accessory Buildings or Structures in Rear Yard**
- 4. Section 6.04.12: Design of All Off-Street Parking Facilities**
- 5. Modification of previous Board of Appeals case #070061, November 1, 2007**
- 6. Any additional relief the Board May Find Necessary**

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*

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Mark G. Zuroff and Board Members Avi Liss and Kate Poverman. Deputy Building Commissioner Michael Yanovitch and Zoning Coordinator Jay Rosa were also present. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance were the Petitioners, Daniel Jurayj and Katherine Silbaugh, along with project architect Evan Kunz, Kunz Architects, 38 Greenwich Park, Boston, MA 02118.

Chairman Zuroff called the hearing to order at 7:15 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the Petitioners purchased the subject property in 1994 and they propose to construct a detached single-car garage in the side and rear yards. Mr. Allen stated that the property is located in the Cottage Farm Local Historic District, which required review and approval by the Preservation Commission. He stated that in order to maintain a consistent streetscape and incorporate historic building materials, the Preservation Commission advised that the detached garage be located in the side and rear yard setbacks.

Architect Evan Kunz reviewed the proposal with the Board. Mr. Kunz described garage details that match the existing craftsman style primary structure including brackets, wood, stucco, and colors. He stated that the garage is below the 15 ft. height requirement and the perimeter of the garage will be 2 ft. from the side and rear lot lines in question. Mr. Kunz stated that the 320 s.f. garage is only large enough to store one vehicle with additional storage space. Mr. Kunz stated that the immediate abutter at 67 Powell Street received approval to construct a detached garage immediately to the rear of this proposed garage (Case No. 2012-0027).

Chairman Zuroff questioned the reasoning behind the proposed height of the garage. Mr. Kunz stated that the garage style and gable are intended to match the primary structure. Mr. Kunz noted that the 14'-11 1/2" height may allow for future storage.

Mr. Zuroff requested further discussion of the setback relief. Mr. Zuroff was particularly concerned that the narrow 2 ft. setback between garage walls and the existing solid fence/wall surrounding the abutting property would result in maintenance challenges.

Attorney Allen stated that the Preservation Commission requested that the garage be located in such a way that would maintain the spacing between the primary structure and the

accessory garage. He stated that the Petitioners desired a setback greater than 0 ft. in order to allow for property maintenance and landscaping.

Board Member Liss questioned if the existing curb cut on Amory Street will be maintained and utilized to access the new garage. Mr. Kunz confirmed that the existing curb cut will be unchanged and the Petitioners currently use the driveway for uncovered parking.

Ms. Poverman questioned why the Petitioners are motivated to install a new garage. The Petitioner stated that he has completed phased improvements since purchasing the property, and the garage construction has been his goal for several years.

Attorney Allen stated that the Petitioners no longer seek approval for **Sections 5.71 and 6.04.12** of the Zoning By-Law. He stated that the Petitioners only request relief from **Section 5.72** of the Zoning By-Law for accessory buildings in the rear yard because the proposed garage is located closer than 6 ft. from the side and rear property line. Here, the proposed setback is 2 ft. from the side and rear property lines.

Attorney Allen discussed special permit relief under **Section 9.05** of the Zoning By-Law arguing: (1) the specific site is an appropriate location because similar to other detached garages in the Cottage Farm Local Historic District (67 Powell, 30, 44, 50, 60, 64, and 74 Amory), this garage is located in the side/rear yard, (2) there will be no adverse effect on the neighborhood where we have a letter of support and there are 17 homes on this block; (3) there will be no nuisance or serious hazard to vehicles or pedestrians where the number of vehicles parked in the driveway will remain the same, it will further remove the cars from the front yard setback, and will allow the Petitioners to shield at least one vehicles from the streetscape; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) the

development will have no effect on the supply on housing available for low and moderate income people.

Finally, Mr. Allen discussed relief under Section 5.43 of the Zoning By-Law, which allows the Board of Appeals to waive side and rear yard setback requirements if a counterbalancing amenity is provided. He stated that the Petitioners agreed to submit a landscaping plan, use historic materials to match the existing house and to remove a rotting tree.

Attorney Allen acknowledged that although the 2 ft. setback results in a "tight area," it is accessible for activities like landscaping and maintenance. Attorney Allen reiterated the fact that the 2 ft. setback represents an effort by the Petitioner to harmonize the goals of the Preservation Commission and the Zoning By-Law.

Chairman Zuroff questioned if the Petitioners had any intention to utilize the garage for residential purposes. Attorney Allen stated that the accessory garage is not intended for residential activity.

Mr. Zuroff then called for public comment in favor of, or in opposition to the Petitioner's proposal.

Raj Dhanda, 67 Powell Street, appeared in opposition and stated that he owns the property located immediately to the rear of 68 Amory Street. He stated that that the location of the new garage will crowd an area that is already dense and the proposed setbacks generate concerns about water runoff.

Attorney Allen stated that the design of the proposed garage was intended to have minimal impact on 67 Powell Street. Attorney Allen also added that Powell Street properties are elevated above Amory Street, so visual and water runoff related impact will not be as burdensome.

Ms. Poverman questioned the height of the wall surrounding 78 Powell Street. Mr. Dhanda stated that the wall is approximately 6-7 ft. tall.

Chairman Zuroff questioned whether the roof configuration is pitched toward the wall located on Mr. Dhanda's property and whether any building permit issued for the project would require water runoff review by the engineering department. Mr. Zuroff also asked if the 2 ft. setback calculation is measured from the garage walls of the roof overhang.

Mr. Kunz stated that only a small portion of the roof is pitched toward the rear.

Mr. Yanovitch stated that the square footage of the accessory structure does not trigger the need for water runoff related review by town engineers. Mr. Yanovitch stated that all setbacks are calculated from the garage walls and elements like a roof overhang, soffit, or gutters are evaluated as projections that are permitted to extend into required setbacks up to 18 inches.

Mr. Rosa delivered the findings for the Planning Board:

FINDINGS:

1. Section 5.72 – Accessory Buildings or Structures in the Rear Yard

Dimensional Requirements	Required	Existing	Proposed	Relief
Rear Yard Setback (Garage)	6'	N/A	2'	Special Permit*
Side Yard Setback (Garage)	6'	N/A	2'	Special Permit*

* Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.

Mr. Rosa stated that the Planning Board had no objection to the single-car garage. He stated that the Planning Board supported the detached single-car garage and the use of stucco, brick, and wood materials because they are consistent with the historic character of the neighborhood. Therefore, the Planning Board recommended approval of the site plan by VTP Associates, dated 12/11/2015 and revised 1/28/2016, and the plans and elevations by Kunz Associates, dated 1/27/2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations subject to the review and approval of the Preservation Commission staff and the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of 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 building 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.

Chairman Zuroff requested that Mike Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the Building Department had no objection to the relief as requested and considered the request to be minimal. Mr. Yanovitch reiterated that groundwater and water runoff evaluation standards are met based on the scope of land disturbance required to construct the garage. Mr. Yanovitch agreed that a rear and side yard setback increase of even 6 to 8 inches could improve water runoff issues, but the accessory structure is also required to maintain a setback from the primary residential structure. He noted that a modest relocation away from side and rear lot lines in question would not alter the zoning relief required.

Chairman Zuroff restated concern about potential water runoff on to adjacent properties and if the Petitioner has any strategy to mitigate this occurrence. Board Member Poverman concurred with this concern.

Architect Evan Kunz stated that it was possible to reduce the overhang projection beyond the proposed 2 ft. setback and that snow guards are often installed to mitigate snow and ice runoff that is often more damaging than rain.

In deliberation, Board Member Liss stated that the garage proposal is well intentioned and purposeful. He found the setback relief request was minimal and he favored the grant of

special permit relief subject to the condition that snow guards be installed. Mr. Liss also supported both Preservation Commission and Planning Board findings that the proposed structure is appropriate from a design standpoint.

Board Member Poverman stated that the requirements for the grant of a special permit under By-Law Section 9.05 were satisfied. Ms. Poverman also commended the Petitioner's use of historically appropriate building materials.

Chairman Zuroff stated that the Board prefers when neighboring residents collaborate to reach a design that is satisfactory for all parties. In this instance, Mr. Zuroff did not believe that the proposed garage would result in adverse impact on abutting properties.

The Board then determined, by unanimous vote that the requirements for a special permit for Section 5.72 of the Zoning By-Law pursuant to Sections 5.43 and 9.05 of the Zoning By-Law were met. The Board made the following specific findings pursuant to said Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no 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. Development will not have any effect on the supply of housing available for low and moderate income people.

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


1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations including a reduced roof overhang projection into the two (2) foot rear and side yard setbacks and snow guard locations, subject to the review and approval of the Preservation Commission staff and the Assistant Director of Regulatory Planning.

2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.

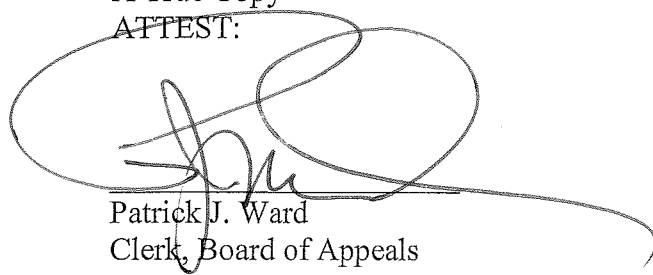
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Unanimous Decision of
The Board of Appeals

Filing Date: 3/21/16


Mark G. Zuroff, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

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