



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. 2016-0092
JACQUES & LUELLA CARTER

Petitioners, Jacques & Luella Carter, applied to the Building Commissioner for permission to construct a single-family home. 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 March 2, 2017 at 7:15 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 Petitioners, 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 16, 2017 and February 23, 2017 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:

591 Chestnut Hill Avenue – Construct a new single family dwelling in an S-15 (Single-Family) Residence District, on March 2, 2016 at 7:15 PM in the 6th Floor Selectmen's Hearing Room (Petitioner: Jacques J Carter) *Precinct 13*

1. Section 5.09.2.n: Design Review

2. **Section 6.04.5.c.1: Design of All Off Street Parking Facilities (Driveway, Front Yard)**
3. **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 programs and services of the Town of Brookline are invited to make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at llgellineau@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 Mark G. Zuroff and Board Members Christopher Hussey and Kate Poverman.

The case was presented by 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 homeowners Jacques and Luella Carter.

Chairman Zuroff called the hearing to order at 7:00 p.m. Attorney Allen waived the reading of the public notice.

Attorney Allen stated that the property is located in a S-15 District. Attorney Allen stated that the property is across the street from Eliot Playground and that Ackers Road abuts the property to the rear. He stated that the Petitioners seek relief from **Section 5.09.2.n** of the Zoning By-Law, to construct a new single family home. Attorney Allen stated that a few neighbors, from Ackers Road, attended the first Planning Board meeting and were particularly interested in drainage and landscaping screening. He noted that the abutters from Ackers Road described an existing issue concerning water run-off from

Chestnut Hill Avenue, onto their properties. Attorney Allen stated that the first Planning Board meeting was continued to address the design suggestions from the Planning Board and the neighbors' concerns. Attorney Allen continued that the Petitioners have reviewed the plans in detail with the neighbors. Attorney Allen noted that the instant proposal is driven by the design review process and incorporates neighbor and Planning Board suggestions.

Attorney Allen then discussed **Section 6.04.14** which requires that no more than 40% of the width or 24 feet, whichever is less...be devoted to the entrance of a garage. Attorney Allen stated that the width of the garage is 27 feet. Attorney Allen stated that the Board may allow for a Special Permit, under **Section 6.04.14.c** if the Board finds that such a garage is not feasible or would result in substantially less open space on the lot. Attorney Allen argued that a garage facing Chestnut Hill Avenue, and not at the rear of the property is not feasible in this instance for the following reasons: First, due to a significant 10% slope towards the rear of the property, there is significant water flowing towards the rear of the property affecting the neighbors on Ackers Avenue. Attorney Allen continued that construction of a garage on the Ackers Avenue side would demand a retaining wall which would interrupt the swale needed for the catch basin on the lowest point of the rear yard, exacerbating the issue for the neighbors on Ackers Avenue. Mr. Allen noted that there is also a 10-foot drainage easement in the rear of the property which limits placement options for the catch basin. Attorney Allen stated that the instant proposal moves the house closer to Chestnut Hill Avenue and regulates the constant stream that currently exists by incorporating catch basins at the front and at the rear of the property. Secondly, placement of the garage at the front of the property allowed for the preservation of border trees in the rear of the property and allowed the preservation of more useable open space in the rear yard. Attorney Allen reasoned that pushing the house back to allow for a driveway on Ackers there would require a significant amount of fill needed and none of the trees would be saved because they would have been

buried. Therefore, Attorney Allen argued that alternative designs would result in substantially less open space on the lot.

Attorney Allen then described relief requested under Section 6.04.5.c.1. Attorney Allen restated the limitations due to the slope and easement at the rear of the property which necessitate a garage and driveway facing Chestnut Hill Avenue. He stated that the required front yard setback for the driveway is 25 ft. and that the proposal is for 15 ft. Attorney Allen stated that relief from the requirements of Section 6.04.5.c.1 may be waived by special permit.

Chairman Zuroff asked whether the Petitioner has received approval for the proposed curb cut. Attorney Allen stated that the Petitioner will submit the appropriate paperwork and stated that no street trees will be removed.

Attorney Allen continued stating that he believes that the purpose of Section 5.09.2.n is to consider FAR and a building's massing to ensure that proposed homes are not absorbing, or inconsistent with a neighborhood. Attorney Allen maintained that the proposed home fits into the Chestnut Hill Avenue neighborhood. He argued that the applicable provisions of Section 5.09.2.n may be reviewed using the conditions under Section 9.05 of the Zoning By-Law: (1) the specific site is an appropriate location for such use because the proposed home is in a single-family zoning district; (2) the use will not adversely affect the neighborhood as the Petitioners have discussed the proposal with their abutters who have not expressed any objections to the proposal; (3) there will be no nuisance or serious hazard to vehicles or pedestrians because adequate visibility of pedestrians is provided; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) there will be no effect on the supply of housing available for low and moderate income people.

Chairman Zuroff asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal.

Chairman Zuroff asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Chairman Zuroff called upon Ashley Clark, Zoning Coordinator & Planner, to deliver the findings of the Planning Department.

FINDINGS

Section 6.04.4.c.1: Design of All Off-Street Parking Facilities (Driveway, Front Yard) From the lot line, except where an access driveway crosses the street lot line, either the distance specified for building setback under Table 5.01, or the average of the setbacks of the builds on the adjacent lots on either side, as calculated in § 5.54, whichever is greater.

Dimensional Requirements	Required	Existing	Proposed	Relief Required
Front-Yard Setback (driveway)	25'	n/a	15'*	Special Permit**

*The submitted proposed site plan does not show the dimension from the property line to the driveway

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

Section 5.09.4 – Design Standards

The most relevant sections of the design review standards are described below:

- a. Preservation of Trees and Landscape – The applicant is proposing to remove many of the existing trees and landscaping due to the width of the new proposed house. The Applicant has stated there will be significant planting and screening as part of a landscaping plan.
- b. Relation of Buildings to Environment – “Proposed development shall be related harmoniously to the terrain, trees, landscape and natural features.” The proposal doubles the width of the previous home, thereby requiring the clearing of existing landscaping (see Appendix B). The proposal also includes two new curb cuts along Chestnut Hill Avenue, triggering setback relief.
- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – Although the proposed home meets all the setback requirements and the front yard setback will remain approximately the same as the previous house, there are concerns about how the articulation of this proposed structure integrates into the form of the streetscape. The proportions make it feel as though they are looming over Chestnut Hill Avenue. This style of architecture with stucco exterior and multiple roof lines is not consistent with the architecture of existing buildings in the neighborhood (see attachment).

By-law: “Proposed developments shall be consistent with the use, scale, yard setbacks **and architecture of existing buildings...the Board of Appeals may require a modification in massing or design so as to make the proposed building more consistent with the form of the existing streetscape**, and may rely upon data gathered that documents the character of the existing streetscape in making such a determination. Examples of changes that may be required include addition of bays or roof types consistent with those nearby...”

The Board should consider if the proposed roof line, large proportions, landscaping and overall design of the proposed home are appropriate and consistent with the neighborhood and streetscape. Photos of the previous home at 591 Chestnut Hill Avenue provide some context to what the existing conditions were (see Appendix C).

Section 5.09.2. n

n. any construction of newly created space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. **In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant’s representation of the intended amount of future conversion.**

Ms. Clark stated that the Planning Board is supportive of this proposal. The Planning Board noted that the Applicants made revisions to the elevations in response to concerns from the Board. Ms. Clark stated that the Board found the setbacks, mass and scaling to be consistent with the surrounding properties which vary in size and design. She stated that the Board recommended placing a condition limiting the space that can be finished in the future. Ms. Clark then stated that the Planning Board recommended approval of the site plan by Verne Porter, Land Surveyor, dated 11/28/16, and the architectural plans by Apkarian Architects, dated 2/3/2017, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final site plans, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory

Planning.

2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, showing heights and design of any retaining walls, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. The extent to which any non-habitable space may be converted to habitable space in the future, in addition to other relevant By-law sections, must comply with §5.22 of the Zoning By-law.
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 or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff recommended a modification of Condition #2 to include “in compliance with all relevant By-Law sections.”

Chairman Zuroff then called upon Michael Yanovitch, Deputy Building Commissioner, to deliver the recommendation of the Building Department. Mr. Yanovitch stated that the proposal was driven by design review and commended the Applicants on working with the Town through the design review process. Therefore, he stated, the Building Department has no objections to the proposal and should relief be granted, the Building Department will work with the Petitioners to ensure compliance.

During deliberation, the Board voted in favor of the relief requested with Condition #2, as modified.

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 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. Development will have no 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 revised conditions:

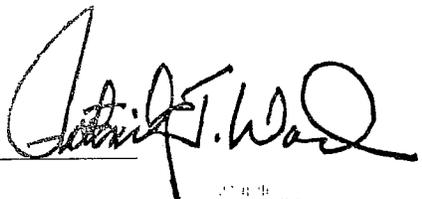
1. Prior to the issuance of a building permit, the applicant shall submit final site plans, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, showing heights and design of any retaining walls, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. The extent to which any non-habitable space may be converted to habitable space in the future, in compliance with all relevant By-Law sections, must comply with §5.22, of the Zoning By-law
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 or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals


Mark G. Zuroff, Chairman

Filing Date: 5/12/17

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals