



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Christopher Hussey

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

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TOWN CLERK
2018 JUL 11 P 3:33

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-00034
33 AGASSIZ STREET REALTY TRUST
174 GARDNER ROAD, BROOKLINE, MA

Petitioners, Michael and Colette Bentley of 33 Agassiz Street Realty Trust, applied to the Building Commissioner for permission to construct an attached two-car garage and to add a six foot deep addition along the rear façade and a new bay and deck at the rear of an existing 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 June 21, 2018 at 7:05 PM., 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 June 7, 2018 and June 14, 2018 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:

174 GARDNER ROAD, BROOKLINE, MA 02445 - Construct an attached garage to the side of the home and relocate driveway in a(n) S-7 SINGLE-FAMILY on 06/21/2018 at 7:05 PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Robert L. Allen, Jr.) Precinct 12

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:

§5.20 - FLOOR AREA RATIO

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE YARD REQUIREMENTS

§6.04.5.C.2 – DESIGN OF ALL OFF-STREET PARKING FACILITIES

§8.02.2 – ALTERATION AND EXTENSION

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 in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer. If you have any questions regarding this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

*Jesse Geller, Chair
Christopher Hussey
Mark Zuroff*

Publish: 06/07/2018 & 06/14/2018

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairperson Johanna Schneider and Board Members Lark Palermo and Chris Hussey. Also present

at the hearing were Zoning Planner & Coordinator, Ashley Clark and Deputy Building Commissioner, Michael Yanovitch.

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 petitioners, Michael and Colette Bentley and the architect for the project, Tim Whitney.

Chairperson Schneider called the hearing to order at 7:05 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then described the proposal, stating that the Petitioner proposes to construct an attached two-car tandem garage and to add a six foot deep addition along the rear façade and a new bay and deck at the rear of an existing single-family home. Attorney Allen explained that the garage will be at the left of the home and will measure approximately 16 feet wide by 44 feet long. He added that the garage would be clad in brick to match the existing house. Attorney Allen noted that the applicant would replace the existing paved driveway with green space. Furthermore, Attorney Allen noted that both the Planning Board and the Preservation Commission approved these plans. The architect for the project, Tim Whitney, described the minor changes that took place since the Planning Board meeting.

Attorney Allen then stated that the Petitioner seeks a special permit for relief from **Section 5.60** under **Section 5.43** for side yard setback and from **Section 8.02.2** pursuant to **Section 9.05** to alter or extend a nonconforming use or structure.

Attorney Allen described the standards under **Section 9.05** of the Zoning By-Law stating: the location is appropriate for the proposed garage and alterations to the home, which will continue to be used as a single-family dwelling; by moving the garage to the left-hand side of the property, it will be consistent with surrounding homes; the use will not adversely affect the neighborhood because the home will continue to be used as a single-family dwelling within an S-7 district; the garage's design is

consistent with the existing home, it will be appropriately screened, and the total amount of pavement will be significantly reduced; there will be no nuisance or serious hazard to vehicles or pedestrians because traffic will not increase and the proposed garage will be more usable than the existing garage, so vehicles may be stored inside instead of outside, and it will be set back significantly from the front lot line; adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling with an attached garage; and there will be no effect on the supply on housing available for low and moderate income people. With respect to Section 5.60, Attorney Allen noted that the counterbalancing amenities would be landscaping on both sides of the home and a tree protection plan.

Chairperson Schneider then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal.

Chairperson Schneider then asked whether anyone was present to speak in opposition to the proposal. Jonas Galper of 164 Gardner Road spoke in opposition to the proposal, particularly regarding the way his view would be impacted.

Chairman Geller then called upon Ashley Clark, Zoning Planner & Coordinator, to deliver the findings of the Planning Board. Ms. Clark noted the following:

FINDINGS

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements

Setback	Allowed	Existing	Proposed	Finding
Side Yard	7.5 feet	~ 20 feet	4 – 6.5 feet	Special Permit*

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

Section 8.02.2 – Alteration or Extension

A special permit is required to alter this non-conforming structure.

PLANNING BOARD RECOMMENDATION

The Planning Board supports this proposal for a new garage and relocated driveway. The side yard setback relief for the new garage will be counterbalanced by the provision of much more green space on the lot, because the existing larger driveway and turnaround area will be replaced with a green lawn.

Therefore, the Planning staff recommends approval of the site plan dated 4/6/2018 and the floor plans and elevations by Tim Whitney dated 6/14/2018 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit site plan, floor plans and accurate 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 landscaping plan 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: a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final floor plans and elevations stamped and signed by a registered architect or engineer; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairperson Schneider then called upon Michael Yanovitch to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department has no opposition to this request and, should relief be granted, the Building Department will work with the Petitioner to ensure compliance with the Building Code.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for a special permit from Section 5.60 under Section 5.43 and from Section 8.02.2 pursuant to Section 9.05 of the Zoning By-Law, respectively, were met, finding specifically under said Section 9.05:

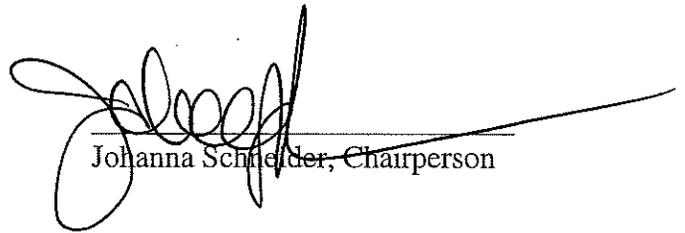
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.

- 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 special permit relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit site plan, floor plans and accurate 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 landscaping plan and a tree protection plan 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: a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final floor plans and elevations stamped and signed by a registered architect or engineer; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

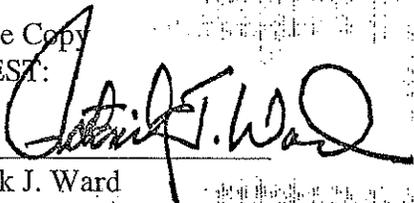
Unanimous Decision of
The Board of Appeals



Johanna Scheffler, Chairperson

Filing Date: 7/11/2018

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals