



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Christopher Hussey

Town Hall, 1st Floor
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0039
SARGENT BEECHWOOD LLC
74 SARGENT BEECHWOOD (LOT 1), BROOKLINE, MA

Petitioner, Sargent Beechwood LLC, applied to the Building Commissioner for permission to construct new single-family dwelling. 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 16, 2018 at 7:10 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 August 2, 2018 and August 9, 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:

74 SARGENT BEECHWOOD, BROOKLINE, MA 02445 - Remove existing dwelling and construct a new single-family dwelling with 4,970 s.f. of finished floor area in a(n) on 08/16/2018

at 7:10PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Law Office of Robert Allen) Precinct 5

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:

§5.09.2.N – DESIGN REVIEW

§6.04.5.C.1 – DESIGN OF ALL OFF-STREET PARKING FACILITIES

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: 08/02/2018 & 08/09/2018

At the time and place specified in the notice, this Board held a public hearing. At the hearing, the Petitioner requested that the hearing be continued to allow time to return to the Planning Board. The hearing was continued to August 23, 2018 at 7:00 p.m. in the Select Board's Hearing Room. At the continued hearing, the Petitioner requested that the hearing be continued for the same reasons as stated above. The hearing was continued to September 6, 2018 at 7:20 p.m. in Room 111 of Town Hall. Present at the continued hearing were Chairperson Johanna Schneider and Board Members Lark

Palermo and Randolph Meiklejohn. 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 present at the hearing were the architect for the project, Paul Apkarian and the land surveyor for the project, Verne Porter.

Chairperson Schneider called the hearing to order at 7:20 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then described the proposal stating that the Petitioner proposes to construct a new two-and-a-half story single-family home with a three-car garage and a total finished gross floor area of 4,997 square feet and an FAR of 0.2. He noted that the home is located in an S-25 zoning district and directly across from an S-40 zoning district, stating that homes in both districts are a part of the Sargent Estates.

Attorney Allen then stated that the Petitioner seeks a special permit for relief from **Section 5.09.2.N** for design review, pursuant to **Section 9.05**. He noted that the special permit for design review was required because of the potentially convertible space in the basement (which is currently proposed to be unfinished). Attorney Allen noted that the proposal went to the Planning Board two times and stated that the proposal has adapted to include the space above the garage as finished living space and counted the staircase and elevator shaft in the basement in the gross floor area calculation.

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. Attorney Neal Glick, Kerstein, Coren & Lichtenstein LLP, 60 Walnut Street, Wellesley, Massachusetts, representing Bruce and Nancy Shaw of 165 Sargent Road, Brookline, Massachusetts,

and the Goddard House, 165 Chestnut Street, Brookline, Massachusetts, spoke in opposition to the proposal. Attorney Glick argued that the proposed house was actually larger than the plans indicated and noted concerns regarding trees and storm water/drainage. Attorney James Wagner, Conn Kavanaugh, 1 Federal Street, 15th Floor, Boston, Massachusetts, representing Clair and Meir Stampfer of 50 Sargent Crossway, Brookline, Massachusetts, also spoke in opposition to the proposal. Attorney Wagner agreed with Attorney Glick's remarks and presented the Board with a set of images. Bill Reyelt, 121 Chestnut Street, Brookline, Massachusetts, spoke in opposition to the proposal. Mr. Reyelt argued that the homes in the Petitioner's analysis were not abutting the proposed homes. Katherine Boden, 26 Codman Road, Brookline, Massachusetts, spoke in opposition to the proposal concerned as a citizen who walks her dog through the neighborhood. Harriet Koch, 211 Sargent Road, Brookline, Massachusetts, spoke in opposition to the proposal arguing that the proposed home is non-conforming.

Attorney Allen addressed the concerns raised by project opponents and noted that the Petitioner would only be able to convert the unfinished space that is allowed to be converted in the future in accordance with the Zoning By-Law.

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

FINDINGS

Section 5.09.4 – Design Standards (submitted by applicant)

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

- a. **Preservation of Trees and Landscape** — Trees and landscape features have been retained at the perimeter of the property and other locations to allow buffer and screening. Grade changes have been mitigated by low site walls minimizing disturbance and soil removal.
- b. **Relation of Buildings to Environment** — the proposal house will conform to all zoning setbacks, height limitation and FAR.
- c. **Relation of Buildings to the Form of the Streetscape and Neighborhood** — The scale of the structure is similar to homes found in the area of Sargent Estates on Sargent Beechwood.

d. **Open Space** —The open space has been designed to provide a front landscaped entrance and usable backyard for outdoor activities.

e. **Circulation** — With respect to vehicular circulation, the existing driveway entrance will be maintained. The driveway is organized to minimize paving and serve both vehicular and pedestrian entry onto the property.

f. **Storm Water Drainage** — The site plan shows all storm water retainage areas.

g. **Utility Service** — Electric, telephone, cable TV and other such lines and equipment will be underground from the source in the public way to all buildings on the site.

h. **Energy Efficiency** — Building will utilize energy-efficient technology and renewable energy resources and shall adhere to the principles of energy conscious design, the structure has been designed in accordance with Massachusetts stretch energy to meet all requirements which in turn will reduce energy consumption.

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.**

Floor Area	Allowed	Proposed	Finding
Floor Area Ratio (% of allowed)	.20 (100%)	.20 w/o basement or attic (99%) .26 with basement and attic (130%)	Special Permit
Floor Area (s.f.)	5,005	4,997 w/o basement or attic 6,497 with basement and attic	

PLANNING BOARD COMMENTS

The Board appreciated the applicant's revisions to this new house based on comments received at the initial Planning Board meeting. The Board felt that the size and massing of the house as well as its location on the site and the proposed landscape plan were acceptable and warranted approval. The Board amended and added recommended conditions below.

Therefore, the Planning Board recommends approval of the site plan by Verne Porter, Land Surveyor, dated 9/21/2017 and floor plans and elevations by Paul Apkarian Architects, Inc., dated 7/16/2018, 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 indicating all dimensions and materials, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. 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 regulating FAR, must comply with §5.22 of the Zoning By-law. All FAR calculations shall also be verified by the Deputy Building Commissioner.
3. Prior to the issuance of a building permit, the applicant shall submit a construction management plan to the Building Department.
4. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan including a tree protection plan that includes metal chain link fencing at the edge of the disturbed area, subject to the review and approval of the Assistant Director of Regulatory Planning.
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: 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. He opined that the stairway and elevator shaft in the basement need to be counted as finished space and stated that the garage ramp is a non-issue and has not ever been counted towards FAR.

During deliberation, Board Member Meiklejohn indicated he would like to see a site plan showing the scale of neighboring properties. He further opined that the attic has a substantial impact on the bulk and massing of the project and that the roof of the attic was too high. Board Member Palermo addressed the difficulty with interpreting Section 5.09.2.N of the Bylaw. She suggested that the Petitioner reduce the roof height. Chairperson Schneider noted that the comparison FAR numbers provided by the Petitioner seem in line with the request.

Attorney Allen requested to continue the hearing so that the Petitioner could revise the plans. The hearing was continued to November 1, 2018 at 7:00 p.m. in the Select Board's Hearing Room.

November 1, 2018. Second night of the public hearing.

Present at the continued public hearing were Chairperson Johanna Schneider and Board Members Lark Palermo and Randolph Meiklejohn. Also present at the continued public hearing were Planner Karen Martin and Deputy Building Commissioner Michael Yanovitch. After re-opening the hearing on November 1, 2018, Chairperson Schneider reminded those in attendance that at the previous hearing the Board heard and closed public testimony, heard the Planning Board's report, heard the Building Department's report, and had begun deliberation.

Attorney Neal Glick, representing the Shaws and Goddard House, requested a point of order to ask Chairperson Schneider to consider hearing the cases for both Lot 1 and Lot 2 together. Chairperson Schneider responded that because the hearing for Lot 1 was already substantially underway, they will be heard separately.

Attorney Allen spoke on behalf of the Petitioner and recapped the previous September 6th hearing. He stated that the discussion before the Board is in regards to potential habitable space and noted that all future habitable space has been taken out of the attic and remains only in the basement. Also in attendance were Paul Apkarian, the architect for the proposal, and Verne Porter, the land surveyor for

the proposal. Attorney Allen, Mr. Apkarian, and Mr. Porter presented the revised plans and noted that the height of the roof was reduced by three feet, four inches. The Board agreed that the applicant had successfully removed all future habitable space from the attic.

Attorney Glick stated that the attic was not the only issue raised at the first hearing and that there were FAR numbers and comparisons to be made to other homes in the zoning district. Chairperson Schneider re-iterated that public comment on this hearing has been closed. Attorney Glick asked that the record show that he protests and disagrees with the Chairperson's procedure in this matter.

Chairperson Schneider asked whether the Planning or Building Departments had any further comments based on the revised plans. Neither department had further comment. When asked for clarification on Section 5.09.2.N, Deputy Building Commissioner Yanovitch explained that the section required a limit on the space that could be converted to finished space in the future and required a comparison of other structures and lots in the neighborhood. He noted that the limitation was included as a condition.

At the request of the Board, Attorney Allen presented additional information pertaining to the other homes in the neighborhood. Data presented included lot size, number of stories, estimated gross floor area, estimated FAR, and estimated setbacks of homes in both the S-25 and S-40 zoning districts. The Board allowed Attorney Glick to speak in opposition to this additional information. Mr. Glick stated that the data provided by Attorney Allen was irrelevant because FAR has two components – lot size and gross floor area. He stated that the Board needs to look at similarly sized lots and that this house is substantially greater than its neighbors even without counting the unfinished 500 feet of mechanical space.

As deliberation continued, Board Member Palermo opined that this section of the By-law is not clear, but that she believes the neighborhood starts with homes facing the same street, and she stated

that in this case the homes on Chestnut Street should not be considered part of the neighborhood. Board Member Palermo noted that none of the lots in the S-25 District are conforming. In regards to the neighborhood analysis, Chairperson Schneider noted that information regarding the relationship of FAR to percent of allowed FAR was informative because it allowed the Board to compare the homes in the S-25 and the S-40 Districts. She noted that the numbers do not take into account potentially finished basements, stating that the numbers for existing structures are artificially low because of this exclusion. In conclusion, she stated that she believes the proposed FAR, massing, height, and setbacks are not out of line with the current homes in the neighborhood.

In reliance on the above referenced revised plans, the Board then determined, by unanimous vote that the requirements for a special permit from **Section 5.09.2.N** for design review, pursuant to **Section 9.05** of the Zoning By-Law were met, finding specifically under said **5.09.2.N** that the massing, scale, footprint, and height of the building are not substantially greater than and 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, and finding specifically under said **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition because the proposed home is a single-family, consistent with the other homes in the neighborhood.
- b. The use as developed will not adversely affect the neighborhood because the massing, scale, footprint, and height of the building are not substantially greater than other structures in the neighborhood and the undersized lots in the same zoning district as the subject property have similar setbacks to the proposal.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians and the garage and driveway design are typical of the neighborhood.
- 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.

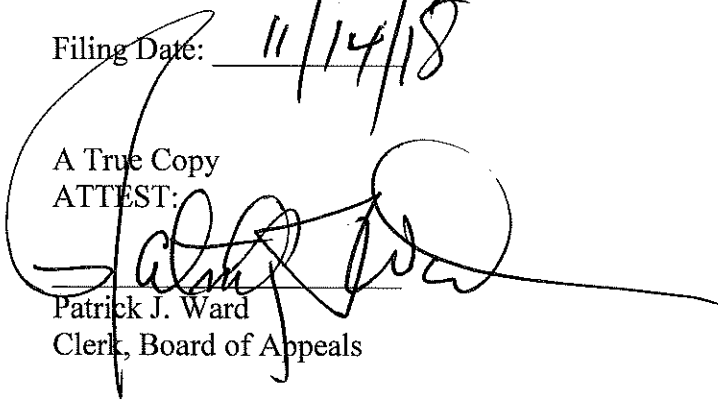
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final site plans, floor plans and elevations indicating all dimensions and materials, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. 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 regulating FAR, must comply with §5.22 of the Zoning By-law. All FAR calculations shall also be verified by the Deputy Building Commissioner.
3. Prior to the issuance of a building permit, the applicant shall submit a construction management plan to the Building Department.
4. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan including a tree protection plan that includes metal chain link fencing at the edge of the disturbed area, subject to the review and approval of the Assistant Director of Regulatory Planning.
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: 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

Filing Date: 11/14/18

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals


Johanna Schneider, Chairperson