



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Christopher Hussey

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0040
SARGENT BEECHWOOD LLC
74 SARGENT BEECHWOOD (LOT 2)
a/k/a 60 Sargent Beechwood, BROOKLINE, MA

Petitioners 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 September 27, 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 September 13, 2018 and September 20, 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 (lot 2), BROOKLINE, MA 02445 - Construct a new single-family dwelling with 4,999 s.f. of finished floor area in a(n) S-25 SINGLE-FAMILY on 09/27/2018 at

7:05 PM 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: 09/13/2018 & 09/20/2018

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 November 1, 2018 at 7:05 p.m. in the Select Board's Hearing Room. Present at the continued hearing were Chairperson Johanna Schneider and Board Members Lark Palermo and Randolph Meiklejohn. Also present at the hearing were Planner, Karen Martin 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 8:15 p.m. Attorney Allen waived the reading of the public notice.

Attorney Allen specifically noted that the topography of this lot was a bit trickier than that of Lot 1, which the Board had reviewed previously. He stated 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 4,948 square feet and an FAR of 0.2. Architect Paul Apkarian presented the architectural plans.

Mr. Meiklejohn asked if the first floor grade of the house is below the road grade. Mr. Apkarian replied that it is, with the house at 99 feet above grade and the road at 101 feet.

Mr. Allen then described the background of the proposal noting that the Petitioner attended four Planning Board meetings for this proposal. He noted that since the inception of the proposal, the Petitioner has changed the setting of the home, the pitch of the roof, removed the proposed rip rap, and continued to provide documentation illustrating existing and proposed vegetation. He continued that the Petitioner has provided a cross section of the site with distances to surrounding homes, revised the impact statement, provided an updated landscape plan and tree protection plan, and provided and put significant effort into developing a drainage summary. Attorney Allen noted that he had hoped to have Peter Ditto of the Engineering Department weigh in on the drainage plan prior to the hearing, but vacation schedules did not allow such review. He stated that a condition regarding the drainage and/or storm water management plan should ease the Board or the neighbors' concerns.

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 reminded the Board of the comparison that was made to

the surrounding lots during the presentation for 74 Sargent Beechwood (Lot 1) Case No. 2018-0039, which was heard immediately before this case. He then described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the proposed single-family home because the lot meets minimum lot size requirements and is located in a single-family district with homes of a comparable size and style; the use will not adversely affect the neighborhood because the home's overall design and size is similar to other dwellings in the immediate neighborhood and the massing, scale, footprint, and height of the building are not substantially greater than those in the surrounding neighborhood; there will be no nuisance or serious hazard to vehicles or pedestrians and the proposed garage and driveway design are typical of the neighborhood; adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling; and there will be no effect on the supply of housing available for low and moderate income people.

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. Adam Narva, 135 Chestnut Street, spoke in opposition to the proposal. Mr. Nava noted concerns about flooding and that, with this proposal, the risk of a 15-year flood would become a 2-year flood. Although he does not question the legal buildability of the lot, he is concerned about the removal of 40 trees. A resident of the Holy Nativity Convent, 70 Codman Road, Brookline, Massachusetts, also spoke in opposition to the proposal, in particular, the number of trees that would be removed. Attorney James Wagner, Conn Kavanaugh, 1 Federal Street, 15th Floor, Boston, Massachusetts, representing Clair and Meir Stampfer of 50 Sargent Crossway, Brookline, Massachusetts, spoke in opposition to the proposal. Attorney Wagner applauded the reductions to Lot 1 and the reduction in the roof height of the present proposal, but wondered why the proposed home was not reduced in size. 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 tree protection plan was inadequate, the FAR calculations were wrong, and that a smaller house was called for on the present lot that would not exceed the 130% limit on FAR.

Chairperson Schneider then called upon Karen Martin, Planner, to deliver the findings of the Planning Board. Ms. Martin noted the following:

FINDINGS

Section 5.09.4 – Design Standards

The most relevant sections of the design review standards are described below:
(submitted by applicant)

- 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** — Proposal structure 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 space to maximize and facilitate passive 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.)	5,000	4,948 w/o basement or attic 6,406 with basement and attic	

PLANNING BOARD COMMENTS

After numerous Planning Board meetings, the Board was willing to approve this project because it felt that the applicant had provided the requested materials related to the grading, retaining walls, site plan, tree survey which the Board feels have shown that, although the house is larger than it would prefer, it does meet the design review criteria. The Board felt it was not the best expert body to review the stormwater and drainage calculations but would like to see the Engineering Department approve the plans before the project can move forward. The Board emphasized that the amount of basement space that can be finished in the future will be limited by the 130% limit in Section 5.22 of the Zoning By-Law and that although the proposed mechanical space seems large, the applicant will be prohibited from finishing it.

Therefore, the Planning Board recommends approval of the site plan by Verne Porter, Land Surveyor, dated 8/10/2018 and floor plans and elevations by Paul Apkarian Architects, Inc., dated 9/6/2018 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, 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.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, subject to the review and approval of the Assistant Director of Regulatory Planning.
4. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan, stamped by a certified arborist, subject to the review and approval of the Assistant Director of Regulatory Planning and the Tree Warden.
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 he had concerns when Section 5.09.2.N was originally brought to Town Meeting, mainly because Brookline is full of non-conforming lots. He noted that the Board typically charge the Engineering Department with reviewing project drainage plans. He further stated that he did not believe that the basement would be finished against the code and by-law and noted that the FAR has been calculated and re-calculated and approved. He stated that 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. Chairperson Schneider asked a clarifying question about the FAR, in light of allegations raised by representatives of opponents to the project regarding the FAR calculation. Mr. Yanovitch noted that he is confident that the numbers on the plan accurately represent the floor area. Board Member Meiklejohn asked Mr. Yanovitch whether a condition regarding approval of a storm water management plan should be required by the Engineering Department. Mr. Yanovitch stated that the review and approval is already a requirement of any new construction. Mr. Allen noted that the applicant would agree to a condition.

During deliberation, the Board took notice of the neighborhood dimensional information presented by the applicant in Case No. 2018-0039, which was equally relevant to the instant lot. Board Member Palermo stated that she understood the neighborhood concern and noted the importance of the Engineering Department reviewing a storm water management plan for this project. Board Member Meiklejohn agreed with the analysis and importance of the condition. Chairperson Schneider agreed and stated that based on the FAR, the massing, and the setback analysis done with the previous lot, she concluded that the proposed setbacks are not any less than those in the neighborhood. She concurred with the other Board members as to the importance of adding a condition regarding Engineering Department review of the storm water management plan.

In reliance on the above referenced 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:

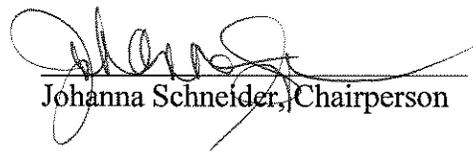
- a. The specific site is an appropriate location for such a use, structure, or condition because the proposed home is a single-family, consistent with the other homes in the neighborhood.
- b. The use as developed will not adversely affect the neighborhood because the drainage will be improved and the tree protection plan and storm water management plan will be approved by the appropriate authorities.
- 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 amended conditions:

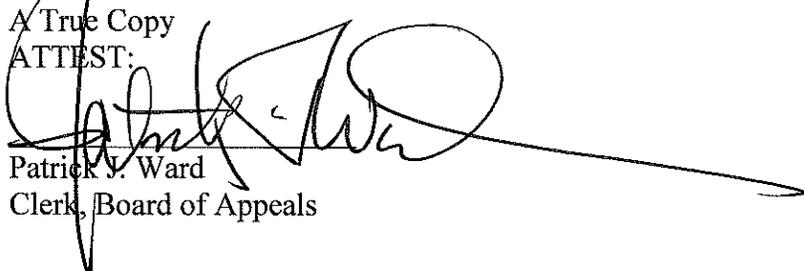
1. Prior to the issuance of a building permit, the applicant shall submit final site plans, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. The extent to which any non-habitable space may be converted to habitable space in the future, in addition to other relevant By-law sections regulating FAR, must comply with §5.22 of the Zoning By-law.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, subject to the review and approval of the Assistant Director of Regulatory Planning.
4. Prior to the issuance of a building permit, the applicant shall submit a tree protection plan, stamped by a certified arborist, subject to the review and approval of the Assistant Director of Regulatory Planning and the Tree Warden.
5. Prior to the issuance of a building permit, the applicant shall submit a stormwater management plan subject to the review and approval of the Engineering Department.
6. 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: 4/14/18


Johanna Schneider, Chairperson

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals