



Town of Brookline Massachusetts

Jesse Geller, Chair
Christopher Hussey
Mark Zuroff

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

Patrick J. Ward, Clerk

AMENDED DECISION

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TOWN OF BROOKLINE
TOWN CLERK

2018 JAN -7 P 9 06

TOWN OF BROOKLINE
BOARD OF APPEALS
808 Washington Street (Lot A and Lot B)
RAISZ TR JONATHAN
CASE NO. 2018-0021

A Decision of the Town of Brookline Zoning Board of Appeals involving Case No. 2018-0021 (808 Washington Street (Lot A and Lot B)) was filed with the Town of Brookline Clerk's Office on September 28, 2018 (the "Original Decision"). The Board convened a public meeting on December 6, 2018 for an administrative consideration of correcting Condition Number 6 of the Original Decision. Present at the meeting were Chairman, Jesse Geller and Board Members Mark Zuroff and Johanna Schneider.

Condition Number 6 of the Original Decision provides:

"6. That the space above the attached garage may not, in the future, be converted to habitable living space."

Jesse Geller explained that the Board's approval at the original Hearing, as supported by a review of the original Hearing records, was conditioned on no portion of the garage being used other than as a garage on the ground floor (including without limitation, no use of the ground floor or space above for residential purposes). Mr. Zuroff confirmed Mr. Geller's synopsis.

The Board then determined, based on a review of the record of the original Hearing and on advice of Town Counsel, that the language of Condition Number 6 of the Original Decision was incorrect due to a scrivener's error and unanimously voted to correct and amend Condition Number 6 and the Original Decision by deleting the prior language and inserting in place thereof the following Condition Number 6:

- “6. That no portion of the garage may be used other than as a garage on the ground floor (including without limitation, no use of the ground floor or space above for residential purposes).”

ORIGINAL DECISION

Petitioners Jonathan Raisz and Peter Fenn applied to the Building Commissioner for permission to subdivide the existing lot consisting of 17,581 square feet into two (2) separate lots of 7,862 square feet (Lot A) and 9,718 square feet (Lot B). The existing single family dwelling on Lot B to be converted into a two family home with an addition at the rear, and a new single family dwelling to be constructed on Lot A. The building permit 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed April 26, 2018, at 7:15 p.m. in the Select Board’s Hearing Room on the 6th floor of Brookline Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, 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 April 12th, 2018 and April 19th, 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:

**808 WASHINGTON STREET, BROOKLINE, MA 02445 - Convert a single family in a(n) SC-7 on 04/26/2018 at 7:15PM in the 6th Floor Select Board’s Hearing Room (Petitioner/Owner: Jacob Walters)
*Precinct 13***

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:

§5.05 - CONVERSIONS

§5.09.2.D – DESIGN REVIEW

§5.50 - FRONT YARD REQUIREMENTS

§5.43 – EXCEPTIONS TO YARD AND SETBACK REQUIREMENTS

§5.70 – REAR YARD REQUIREMENTS

§6.04.5 E – DESIGN OF OFF-STREET PARKING FACILITIES

§5.54.2 – ALIGNMENT

§9.04 - PROCEDURES FOR APPLICATION AND REVIEW OF SPECIAL PERMITS

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: 04/12/2018 & 04/19/2018

The scheduled hearing date was continued at the request of the petitioners, from April 26 to May 3, 2018, at which time the Hearing was opened and the petitioners' presentation made, and then continued again to June 14, 2018. The hearing was further continued at petitioners' request from June 14, 2018 to July 26, 2018. On July 26th, 2018 at 7:10 p.m., this Board re-opened the public hearing at which time testimony resumed. Present at the hearing was Chairman, Jesse Geller and Board Members Mark Zuroff and Christopher Hussey. Attorney Jacob Walters, of

Walters, Shannon & Jensen of 27 Harvard Street, Brookline, Massachusetts presented the case for the petitioners.

Mr. Walters stated that all the relief needed could be accomplished by four (4) Special Permits, specifically under **Section 5.50** Conversions, **Section 5.09.2.d**, Design Review, **Section 5.43**, and the last under **Section 6.04 5.e**, Design of Off Street Parking Facilities. Mr. Walters commented that the petitioners appeared on five (5) separate occasions before the Planning Board and after a great deal of consultation with the Planning Board, the Planning Board Staff and the neighbors, they made a number of changes to the submitted plan and the project to address the concerns raised and comments received. Mr. Walters noted that the revised design was unanimously approved by the Planning Board and that the Planning Board determined the design review standards as set forth in **Section 5.09.2.d – (a-m)** were met by the petitioners' proposal, as revised from the initial submission.

Mr. Walters pointed out that with reference to the single story attached garage to be added at the rear of the existing dwelling on Lot B, the Planning Board and Preservation Commission felt that the attached gable roofed design option was preferable to either a free standing garage or an attached garage with a flat roof.

Mr. Walters stated with reference to **Section 5.05** of the Zoning By-Law that the proposal would not increase any existing nonconformity and was needed due to the conversion of the existing single family dwelling to a two unit dwelling.

As to the relief required pursuant to **Section 6.04.5.e**, Mr. Walters commented that the proposed shared driveway triggers the need for relief and added that the petitioners would prepare and record mutual easements benefitting (and burdening) each of Lot A and Lot B.

Mr. Walters stated that the proposal requires dimensional relief, specifically relief from the front and rear yard requirements of the Zoning By-Law, both of which can be addressed by **Section 5.43**, which allows for the waiver of certain dimensional requirements if appropriate counterbalancing amenities are provided. Specific to the front yard, Mr. Walters stated that the requirement in an SC-7 district is 20 feet, but due to alignment requirements under **Section 5.54.2**, 40 feet is required. Mr. Walters pointed out, however, that the requirement is unfairly impacted by the barn on the abutting property which is an anomaly in the neighborhood since it is set back a substantially greater distance from the street than all other improvements. Mr. Walters added that the new single family dwelling will be in line with all the existing houses on Washington Street. With regard to the rear yard setback, Mr. Walters stated that the proposed attached garage would be 10'5" from the rear lot line with a 30 foot set back requirement. Mr. Walters added that the petitioners propose landscaping to both screen and beautify the rear yard. He further stated that the Planning Board felt the attached garage would be less intrusive to the abutter than an as of right detached garage. Mr. Walters continued by stating that the requested Special Permits conformed with the requirements of **Section 9.05** of the Zoning By-Law in that the location of the additional unit was appropriate, no nuisance would be created, traffic would in no way be affected and the supply of housing in Brookline would not be diminished or harmed. Mr. Walters concluded his remarks by saying that the petitioners have no issue with the proposed conditions suggested by the Planning Board.

Chairman Geller then asked if anyone in attendance wished to speak in support of the petitioners' proposal. No one asked to speak.

Chairman Geller then asked if anyone wished to speak in opposition. Kornelia Polyak of 11 Orchard Road stated that she opposed the request for rear yard setback relief because the proposed attached garage would be too close to her property and compromise her privacy.

Susan Podziba of 21 Orchard Road commented that the lot width calculation was incorrect and that (1) either there was not adequate width for an additional dwelling, or (2) that due to the incorrect lot width calculation, the proposed new single family home on Lot A would have to be moved forward, creating potential new relief requirements. Ms. Podziba continued that the existing lot is not large enough to support three dwelling units as is proposed. Ms. Podziba noted that her opposition to the attached garage proposal, as opposed to a detached garage is, in part, due to the possibility of an owner seeking to build habitable space above the garage in ten (10) years.

Scott Cassel of 21 Orchard Road also spoke in opposition indicating that he agreed with the statements of the prior speakers in opposition. He commented that the proposal increased risk to the neighborhood. Mr. Cassel stated that in the past the typical number of vehicles entering and exiting the driveway were two to three, whereas if one assumes the owners of each of the three dwelling units have two vehicles, the driveway usage will increase to six cars coming and going. Mr. Cassel then stated that traffic on Washington Street and in Brookline in general has increased and that increased density in this neighborhood was not desirable. Mr. Cassel further stated that the petitioners have removed many of the trees on the site resulting in a loss of screening.

Edward and Linda Musmon of 5 Downing Road each expressed concern about adequacy of the landscaping to screen their property given its proximity to the shared driveway. Both requested that the Zoning Board impose a construction management plan and require a fence

between 808 Washington Street and their own property during construction. Mr. and Mrs. Musmon stated they felt the impact of the new dwelling on their privacy was too great and asked the Board to deny the requested relief.

Ashley Clark delivered the findings of the Planning Department. Ms. Clark stated that the Planning Board is supportive of this proposal. She noted that the Planning Board appreciated the design changes made by the petitioners in an effort to meet the demands of the neighbors. Ms. Clark mentioned that the Planning Board felt the attached garage with a gable roof was the best design and concluded that the Planning Board recommends approval.

Therefore, Ms. Clark stated, the Planning Board recommends approval of the site plan by professional land surveyor Dennis O'Brien dated 6/29/18, and the architectural plans by registered architect Jonathan Raisz, dated 7/1/18, subject to the following conditions:

1A. For Lot A (*new single-family structure*): Prior to the issuance of a building permit, the applicant shall submit a revised zoning analysis updating the correct front yard setback and including final site plan, stamped and signed by a registered engineer or land surveyor, showing the change to driveway setback, landscaping plan, indicating all counterbalancing amenities, floor plans and elevations, subject to the review and approval by the Planning Board.

1B. For Lot B (*conversion of existing single-family structure to a two-family structure*): Prior to the issuance of a building permit, the applicant shall submit a revised zoning analysis including Section 5.62 for projections to clarify the 6' dimension at the south side yard property line, final site plan, stamped and signed by a registered engineer or land surveyor, showing change to driveway setback, landscaping plan, indicating all counterbalancing amenities, floor plans and elevations, subject to the review and approval by the Planning Board

2. Prior to issuance of a building permit for the addition to the existing house, the applicant

shall submit a final site plan, landscaping, floor plans, and elevations subject to review and approval of the Planning Board, and elevations, façade details and improvements to the existing home to the Preservation Commission for its review and approval.

3. Prior to the issuance of a building permit, the applicant shall submit a construction management plan, subject to the review and approval of the Building Commissioner, with a copy to the Planning Department.

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) evidence that easements for the common driveway and the Board of Appeals decision have been recorded at the Registry of Deeds.

The Chairman then called upon Michael Yanovitch, representing the Building Department, to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department has no objections to the request for relief and that the Building Department will work with the petitioners to ensure compliance with the Building Code. Mr. Yanovitch stated that calculating lot width can be difficult given the curve of the front lot line along the street, but added that the new technology available to the Building Department helped to determine the exact width. On inquiry from the Board Members, Mr. Yanovitch confirmed he would verify the lot width but was very confident that the width met the requirements of the Zoning By-Law and anticipated at most the proposed new dwelling might need to be moved six inches (6") forward.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the petitioners have satisfied the requirements necessary for relief under the

specified sections of the By-Law, being Sections 5.50, 5.09.2.d, 6.04.5.e, 5.43.2, and 9.05 of the Zoning By-Law and made the following specific findings pursuant to said Section 9.05 of the Zoning By-Law:

- 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.

Accordingly, the Board voted unanimously to grant the requested relief subject to the conditions recommended by the Planning Board and two additional conditions, as follows:

1A. For Lot A (*new single-family structure*): Prior to the issuance of a building permit, the applicant shall submit a revised zoning analysis updating the correct front yard setback and including final site plan, stamped and signed by a registered engineer or land surveyor, showing the change to driveway setback, landscaping plan, indicating all counterbalancing amenities, floor plans and elevations, subject to the review and approval by the Planning Board.

1B. For Lot B (*conversion of existing single-family structure to a two-family structure*): Prior to the issuance of a building permit, the applicant shall submit a revised zoning analysis including Section 5.62 for projections to clarify the 6' dimension at the south side yard property line, final site plan, stamped and signed by a registered engineer or land surveyor, showing change to driveway setback, landscaping plan, indicating all counterbalancing amenities, floor plans and elevations, subject to the review and approval by the Planning Board

2. Prior to issuance of a building permit for the addition to the existing house, the applicant shall submit a final site plan, landscaping, floor plans, and elevations subject to review and

approval of the Planning Board, and elevations, façade details and improvements to the existing home to the Preservation Commission for its review and approval.

3. Prior to the issuance of a building permit, the applicant shall submit a construction management plan, subject to the review and approval of the Building Commissioner, with a copy to the Planning Department.

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) evidence that easements for the common driveway and the Board of Appeals decision have been recorded at the Registry of Deeds.

5 That the Building Department shall calculate the lot width of the property to ensure compliance with the Zoning By-Law, and

6 That no portion of the garage may be used other than as a garage on the ground floor (including without limitation, no use of the ground floor or space above for residential purposes).

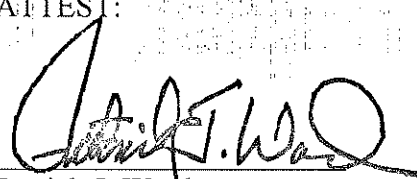
Unanimous Decision of

The Board of Appeals

Filing Date: 01/07/19


Jesse Geller, Chairman

A True Copy

ATTEST:

Patrick J. Ward
Clerk, Board of Appeals