



BOARD OF APPEALS
Jesse Geller, Chairman
Mark G. Zuroff
Christopher Hussey

Town of Brookline

Massachusetts

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

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2019-0022
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 a new driveway to serve a previously approved garage addition. 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 May 30, 2019 at 7:00 PM., in the Select Board'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 May 16, 2019 and May 23, 2019 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 - Modify side yard setback for new driveway to serve previously-approved garage addition in a(n) S-7 SINGLE-FAMILY on May 30th, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: 33 Agassiz Street Realty Trust) *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:

§6.04.5.C.2 – 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
Mark G. Zuroff*

Publish: 5/16 & 5/23

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. The hearing was continued to June 6, 2019 at 7:00 p.m. in the Select Board's Hearing Room. Present at the continued hearing were Chairman Mark G. Zuroff and Board Members Lark Palermo and Steve Chiumenti. Also present at the hearing were Senior Planner, Maria Morelli and Deputy Building Commissioner, Joseph Braga.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance was the Petitioner, Michael Bentley.

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

Attorney Allen then described the proposal stating that the Petitioner proposes to construct a new driveway to serve a previously approved garage addition. He noted that the proposed driveway was a modification to a previously approved plan that was necessary to protect an existing street tree. Mr. Allen explained that when construction started, the Petitioner became aware that the approved driveway would be too close to a street tree. Thus, the Petitioner had Tom Brady out to the site to assess the conditions and the street tree. Attorney Allen noted that although the driveway meets the five-foot setback required for the majority of the length, the portion which has been redesigned to avoid the street tree will only be 2.9 feet away from the lot line. He added that the Petitioner's application included a letter of support from the abutters on the left, closest to the portion of the driveway which is proposed to be located closer to the lot line, at 168 Gardner Road.

Attorney Allen then stated that the Petitioner seeks a special permit for relief from Section 6.04.5.c.2 under Section 5.43 for driveway setback, pursuant to Section 9.05.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the proposed driveway; the use will not adversely affect the neighborhood because the neighbors are in support and the proposed driveway is designed to protect the street tree; there will be no nuisance or serious hazard to vehicles or pedestrians because on-site circulation will not change; adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling with an attached garage and the proposed driveway; and there will be no effect on the supply on housing available for low and moderate income people.

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

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

Chairman Zuroff then called upon Maria Morelli, Senior Planner, to deliver the findings of the Planning Board. Ms. Morelli noted the following:

FINDINGS

Section 6.04.5.c.2- Design of off Street Parking Facilities

Section 5.43 – Exceptions to Yard and Setback Regulations

** Under Section 5.43, the Board of Appeals may waive by special permit yard and/or setback requirements*

Setback	Allowed	Existing	Proposed	Finding
Side Yard (Driveway)	5 feet	N/A	2.9 feet	Special Permit*

PLANNING BOARD COMMENTS

The Planning Board had no issues with moving the portion of the driveway and supported to efforts to protect the street tree.

Therefore, the Planning Board recommends approval of the site plan by Antoni Szerszunowicz dated 3/5/2019 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit site plan 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 and b) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff then called upon Joseph Braga, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Braga stated that the Building Department had no objections to the relief requested.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for a special permit from Section 6.04.5.c.2 under Section 5.43 pursuant to Section 9.05 of the Zoning By-Law, respectively, were met, finding specifically under said Section 9.05:

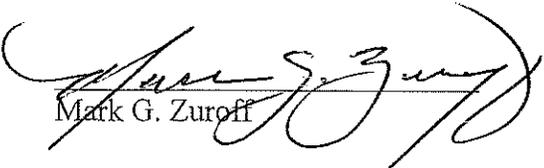
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 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 and b) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

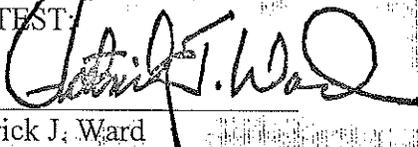
Unanimous Decision of
The Board of Appeals

Filing Date: 6/20/19


Mark G. Zuroff

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals