



BOARD OF APPEALS
Jesse Geller, Chairman
Mark G. Zuroff

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
Town of Brookline
2019 JUL 12 AM 8:42
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. 2019-0011
22 CARLTON LLC
22 CARLTON STREET, BROOKLINE, MA

Petitioner, 22 Carlton LLC, applied to the Building Commissioner for permission to construct an accessory structure with parking for additional cars and living space. 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 April 18, 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 April 4, 2019 and June 11, 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:

22 CARLTON STREET, BROOKLINE, MA 02446 - Construct carriage house and garage in a(n) S-10 SINGLE-FAMILY on April 18, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: 22 Carlton LLC) Precinct 1

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:

§4.07 – TABLE OF USE REGULATIONS, USE #61

§5.09.2.N – DESIGN REVIEW

§5.20 - FLOOR AREA RATIO

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 the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

*Jesse Geller, Chair
Mark G. Zuroff*

Publish: April 4 & April 11

At the time and place specified in the notice, this Board held a public hearing. At the hearing, the Petitioner requested to continue the hearing to return to the Planning Board. The hearing was continued to June 20, 2019 at 7:00 PM in the Select Board's Hearing room. Present at the continued hearing were Chairman Mark G. Zuroff and Board Members Johanna Schneider and Randolph Meiklejohn. Also

present at the hearing were Assistant Director of Regulatory Planning, Polly Selkoe, Planner Victor Panak, 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 representative for the Petitioner, Michael Rakis, and the architect for the proposal, Alan Christ.

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 1,835 s.f. accessory structure with garage parking for four (4) additional cars. He noted that the proposed structure is at the rear of the existing single-family home and stated that the structures would still be under the allowed floor area ratio of the S-10 District. Attorney Allen noted that the applicant revised this plan set to remove the proposed basement of the accessory structure, to add trusses in the attic to render the space uninhabitable, and to include more garage space than habitable space. He added that the Petitioner collects cars and would like a place to store them. He stated that the proposed 1,835 s.f. included 20 s.f. of mechanical space which could be excluded under the by-law. Attorney Allen noted that this revised proposal received the unanimous support of the Planning Board.

Attorney Allen then stated that since the time of the application, the changes have resulted in a revised denial letter from the Deputy Building Commissioner, Joseph Braga. Based on such, Attorney Allen stated that the Petitioner seeks a special permit for relief from Section 4.07 – Table of Use Regulations, Use #55 for space for more than four cars in a parking area or garage for a single family dwelling, and from Section 4.07 – Table of Use Regulations, Use #61 for construction of an accessory structure greater than 150 s.f, all pursuant to Section 9.05.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: (1) The location is appropriate for the proposed structure because the lot is oversized for the neighborhood and the proposed accessory structure will meet all setback requirements and the gross floor area will be included in the floor area ratio for the lot, which will not be exceeded. (2) The use will not adversely affect the neighborhood because the proposed structure is consistent in design with surrounding homes and accessory structures, and the applicant proposes to provide additional landscaping to offset the additional structure. The applicant also worked to design the structure at a point minimally visible. (3) There will be no nuisance or serious hazard to vehicles or pedestrians because the new structure will not affect the streetscape, and traffic to and from the site is not expected to increase; the new garage will house more cars out of view of the street and allow the owner to utilize the existing garage for vehicles used daily. (4) Adequate and appropriate facilities will be provided for the proper operation of single-family dwelling with an accessory detached structure. The space on the property will be better utilized and the Petitioner will be able to house his collected cars out of site. (5) There will be no effect on the supply on housing available for low- and moderate-income people. Attorney Allen then introduced Alan Christ to present the plans. Alan Christ, Alan Christ Architects LLC, 117 Kent Street #2, Brookline, Massachusetts, presented the plans to the Board.

Chairman Zuroff noted that the site plan showed a blank site with no landscaping and inquired as to whether new landscaping would be added. Attorney Allen explained that many of the trees were removed a long time ago and that new landscaping would be added to the site. He further reviewed the proposed storm water management measures.

Board Member Meiklejohn asked whether any additional paved areas were being proposed. Mr. Allen stated that no additional pavement would be added and that the existing driveway and parking areas would be repaved. Board Member Schneider asked about when the tree removal occurred on site.

Michael Rakis, the home owner, stated that the tree removal occurred when he moved into the house a few years ago and was coordinated with neighbors. Board Member Meiklejohn noted that the dormers seemed useless. Mr. Christ confirmed that the dormers were purely decorative.

Chairman Zuroff then asked whether anyone was present to speak in favor of the proposal. Francis Farrell, 1031 Beacon Street, Brookline, Massachusetts, spoke in favor of the proposal. He noted the derelict nature of the property before the improvements by the current owners and stated support for the proposal.

Chairman Zuroff then asked whether anyone was present to speak in opposition to the proposal. Jim Franco, Town Meeting Member Precinct 1, expressed opposition to the proposal on the grounds that the proposed accessory structure far exceeded the threshold in the By-Law that triggers the need for a special permit. Neil Gordon, Town Meeting Member Precinct 1, also expressed opposition to the Proposal. Mr. Gordon opined that the given scale of the relief sought merited the purview of Town Meeting rather than the Board of Appeals.

Chairman Zuroff then called upon Polly Selkoe, Assistant Director of Regulatory Planning, to deliver the findings of the Planning Board. Ms. Selkoe noted the following:

FINDINGS

FINDINGS

[With the revisions to the interior of the accessory structure, the relief needed is for Sec. 4.07, Use 55 and 61. Because the revised plan now conforms to FAR, no design review is required.]

Section 4.07 - Table of Use Regulations, Use #55

A special permit is required for more than four cars in a parking area or garage for a single-family dwelling.

Section 4.07 - Table of Use Regulations, Use #61

A special permit is required for any accessory structure greater than 150 square feet.

PLANNING BOARD RECOMMENDATION

The Planning Board originally was not supportive when the accessory structure was proposed as a single-family dwelling. However, now that the habitable space has been further reduced by eliminating the basement, attic and office space and providing more parking spaces on the ground floor level, the

Planning Board is supportive of this accessory structure on this very large lot, even though it is well over 150 s.f. To counter the speculation that the accessory structure could be converted to a single-family dwelling in the future, a condition emphasizing that prohibition has been added, and the Planning Board believes the neighbors will be watchful that it not be converted to a rental unit.

Therefore, the Planning Board recommends approval of the site plan by Brian Donegan, dated 4/20/2016, and floor plans and elevations by Alan Christ Architects LLC dated 5/23/2019, subject to the following conditions:

1. Prior to the issuance of a building permit, the Applicant shall submit a final site plan, floor plans, and elevations, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the Applicant shall submit a landscaping stamped by a registered-landscape architect, subject to review and approval by the Assistant Director for Regulatory Planning.
3. No future occupancy of the accessory structure as a dwelling unit shall be allowed.
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) final floor plans and elevations, stamped and signed by a registered architect, and 3) 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.

During deliberation, Chairman Zuroff stated that the project had clearly evolved and responded to the concerns raised by surrounding residents. He added that he recognized the diversity of the area, he did not think that the proposal would be more detrimental to the neighborhood than the existing structure. Board Member Meiklejohn agreed and expressed his support for granting the requested relief. Board Member Schneider stated that she believed the project to be strange but that the size of the lot could allow for the additional square footage. She emphasized the uniqueness of the site and emphasized that the decision would not be precedence-setting.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for a special permit from Section 4.07 – Table of Use Regulations, Use #55 for space for more than four cars in a parking area or garage for a single family dwelling, and from Section 4.07 – Table of Use Regulations, Use #61 for construction of an accessory structure greater than 150 s.f, all 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 because the lot is oversized for the neighborhood and the proposed accessory structure will meet all setback requirements and the gross floor area will be included in the floor area ratio for the lot, which will not be exceeded.
- b. The use as developed will not adversely affect the neighborhood because the proposed structure is consistent in design with surrounding homes and accessory structures, and the applicant proposes to provide additional landscaping to offset the additional structure.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians because the new structure will not affect the streetscape, and traffic to and from the site is not expected to increase; the new garage will house more cars out of view of the street and allow the owner to utilize the existing garage for vehicles used daily.
- d. Adequate and appropriate facilities will be provided for the proper operation of single-family dwelling with an accessory detached structure. The space on the property will be better utilized and the Petitioner will be able to house his collected cars out of site.
- 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 a final site plan, floor plans, and elevations, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the Applicant shall submit a landscaping plan stamped by a registered landscape architect, subject to review and approval by the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a building permit, the Applicant shall submit a drainage plan stamped by

a registered civil engineer, subject to review and approval by the Transportation Division of DPW and the Assistant Director for Regulatory Planning.

4. No future occupancy of the accessory structure as a dwelling-unit shall be allowed and the proposed attic space shall remain as uninhabitable space in perpetuity.
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: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, 2) final floor plans and elevations, stamped and signed by a registered architect, and 3) evidence that the Board of Appeals decision has been recorded at the registry of Deeds.

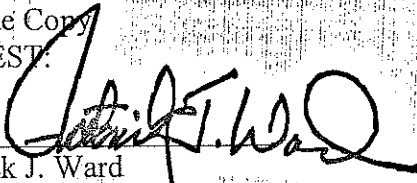
Unanimous Decision of
The Board of Appeals



Mark G. Zuroff

Filing Date: 7/12/19

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals