



Town of Brookline

Massachusetts

RECEIVED
TOWN OF BROOKLINE
CLERK

2021 MAY 24 P 4:01

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

Benjamin Kaufman, Clerk

BOARD OF APPEALS
Jesse Geller, Chairman
Mark G. Zuroff
Johanna Schneider

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2021 MAY 24 P 4:01

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2020-0064

CHESTNUT HILL REALTY
471 VETERANS OF FOREIGN WARS PARKWAY, BROOKLINE, MA

Petitioner, Chestnut Hill Realty, applied to the Building Commissioner for permission to combine two parking lots into one lot, and to replace an existing trash enclosure and compactor with a recycling center building at 471 VFW Parkway. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed April 29, 2021 at 7:00 p.m., virtually as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, 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 15, 2021 & April 22, 2021 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 on the following petition:

Address: 471 VFW Parkway
Petitioner: Chestnut Hill Realty
Zoning District: M-0.5 (Apartment House)
Precinct: 16
Description: Combine two parking lots into one lot; replace an existing trash enclosure and compactor with a recycling center building

Date, time, and location of the public hearing are as follows:

Date: 04/29/2021
Time: 7:00 pm
Location: Virtual Meeting (see below)

Register for this virtual hearing:

<https://bit.ly/2Q8sTOq>

After registering you will receive a confirmation email containing information about joining the hearing.

Our Virtual Meeting Guide for Applicants and the Public can be found here:

<https://bit.ly/30wRoY3>

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

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.50 - FRONT YARD REQUIREMENTS

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

QUESTIONS, PUBLIC COMMENT FILES, PDFs OR PRESENTATIONS:

*Advanced submissions of files and presentations are strongly encouraged. In an effort to ensure the Board has adequate time to review materials we ask that any additional documents such as written comment letters, photos, files, or presentations or questions be sent before the hearing to **Karen Chavez (kchavez@brooklinema.gov)**.*

*All plans and submissions may be found at: <https://aca-prod.accela.com/Brookline/Default.aspx>. An account is **NOT REQUIRED** to access materials. Public testimony will be taken during the hearing as normal.*

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters by mail or in the papers. Questions about hearing schedules may be directed to the Planning and Community Development Department at vpanak@brooklinema.gov, 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 Assistive Listening Devices, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

*Jesse Geller, Chair
Mark G. Zuroff
Johanna Schneider*

Publish: 04/15/2021 & 04/22/2021

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chair Mark G. Zuroff and Board Members Lark Palermo and Randolph Meiklejohn. Also present at the hearing were Deputy Building Commissioner, Paul Campbell, and Planner & Zoning Coordinator, Karen Chavez.

Chair Zuroff reviewed the standard virtual hearing protocol with the Board Members and all those in attendance.

The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance was Marc Levin, President of Development and Construction for CHR, the project manager, Andy Martineau and the project landscape architect, Theo Kindermans, Stantec, 226 Causeway Street, 6th Floor, Boston, Massachusetts.

Chair Zuroff called the hearing to order at 7:00 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen described the public and neighborhood process. Mr. Allen stated that the proposal will be an improvement to an existing trash and recycling area. Attorney Allen stated that the proposal went to the Planning Board a total of three times – in January, February and in March. He stated that there was a neighborhood meeting in February and noted that about 20-25 people attended. Mr. Allen stated that a site visit was conducted with planning staff to discuss the topography of the parking lot and how it impacted the location of the recycle center.

Attorney Allen stated that the process is an example of the developer meeting with the neighbors, hearing concerns, and ultimately coming out with a better project. Mr. Allen stated that when the proposal first came before the Planning Board, there were concerns from some members of the Board, but through the revisions, the Board was unanimously supportive.

Attorney Allen stated that the proposal is to construct a 660 square foot trash and recycling center in this M-0.5 zoning district and to combine two parking lots on a lot that has an area of 975,179 square feet (22.38 acres). Attorney Allen added that the setback relief required is from a lot also owned by the Petitioner and stated that the Planning Board noted that the proposed counterbalancing amenity, the landscaping, is “excellent and would successfully screen and mitigate any negative impacts from the facility.” Mr. Allen stated that there is also support from the Health Department, which believes that the proposed upgrades will be an improvement to the existing conditions since the center will now be a soundproof state-of-the-art recycling center.

Mr. Martineau then reviewed the plans for the center. He stated that the existing trash and recycling shed is less than ideal, and CHR would like to improve the conditions. Mr. Martineau reviewed pictures of the existing conditions, the site plan showing the abutting parcels, and the design iterations to the Zoning Board of Appeals. Mr. Martineau described the parking areas as having steep grades, and shared a map demonstrating an alternative site analysis that was

conducted. He reviewed the challenges that each alternative site examined presented. Mr. Martineau then reviewed a summary of the revisions, including the reduction of height and limiting pick-ups to being internal. He also noted that additional EV parking spaces were added, and stated that the proposal now exceeds the minimum requirement under the Zoning By-law. Mr. Martineau then reviewed the comprehensive landscaping plan, and noted that it has been designed to minimize any impact from the parking or the proposed center.

There was a discussion with the Board as to how residents drop off their trash, either by walking or driving to the center. Mr. Martineau clarified that this center was just one of many trash enclosures located throughout the site, and noted that not all residents would be utilizing this location. Upon inquiry from a Board Member regarding the noise impact of the compactor, Mr. Martineau stated that the compactor is approximately 64 decibels at 40 feet, if it were unenclosed. He stated that as the compactor will be enclosed, the decibel range is approximately 20-25. Mr. Martineau added that the enclosure includes additional sound-attenuating insulation that further dampens any noise impact. For reference, he stated that ambient noise ranges from 20-25 decibels and is akin to background noise.

Upon inquiry from Chair Zuroff, Mr. Kindermans stated that the compactor includes a drainage system that would allow someone to spray out and clean the facility. Mr. Kindermans stated that the drainage system is designed to train into an oil and grit separator that can be serviced as needed. Furthermore, Mr. Kindermans stated that as far as the resident's interaction with the compactor goes, the resident would open a hatch that leads directly into the compactor, therefore any liquid would go directly into the compactor.

Upon inquiry from Board Member Meiklejohn, Mr. Martineau, relying on a site map, reviewed the setback relief required for the front yard setback for the accessory trash and recycle

center. Mr. Martineau stated that the setback relief is required because if the center were pushed further into the site to comply with the required front yard setback, there would be insufficient access and clearance that is required for the service provider to be able to service the center.

Mr. Martineau, relying on a map that included VFW Parkway, Independence Drive, Asheville Road and the proposed location of the center, reviewed the proposed grade changes with the Board. He noted that the grade will be reduced about eight feet, and the new center will sit lower than the existing. Mr. Allen added that sinking the building down into the grade and rotating the structure to better fit within the topography was a recommendation of the Planning Board.

Upon inquiry from Board Member Palermo, Mr. Martineau stated that the closest single-family abutter is approximately 135 feet away. Mr. Allen stated that he spoke with that property owner and they have no issues with the proposal.

Attorney Allen then reviewed the requested zoning relief. Mr. Allen stated that a special permit is required to allow the size of the accessory structure to exceed 150 square feet, and a special permit is required for the front yard setback relief for the recycle center and for the parking setback. He stated that 25 feet are required, and 20 feet are proposed for the recycling center. He noted relief is available under Section 5.43, and referred to the presentation of the proposed landscaping counter balancing amenity. Mr. Allen noted that the substantial landscaping and screening plan proposed sufficiently counterbalances the five-foot setback relief requested. Mr. Allen stated that a setback of 12.5 feet is proposed for the parking, where 25 feet are required and stated that the aforementioned counterbalancing amenities also sufficiently offsets the impact of the requested relief for the parking.

Mr. Allen reiterated that all zoning relief required is available is by special permit. Mr. Allen stated that the proposal meets all the requirements under Section 9.05 stating the following:

(1) Specific site is an appropriate location for such use: The proposed center is not a new use for this location. The refuse service and parking have been in this location for over 30 years. The refuse is located here because it works well operationally, as residents can deposit their trash/recycling while exiting the property. The proposal significantly improves upon the existing trash configuration by improving operations of the facility and mitigating potential nuisance issues, for both residents and abutters. (2) Use will not adversely affect the neighborhood: The proposal significantly improves an existing use that has been in this location for over 30 years. In fact, the proposed building is located further away from abutters than the existing trash and recycling configuration, and will not be visible due to the new buildings being constructed and the robust amount of landscaping that will be planted. The proposed improvements move the refuse containers into an enclosed building that is specifically designed for the use, including sound proof insulation, an acoustically-rated garage door, and an odor mitigation system. As a result, all potential nuisance issues (odor, sound, debris) are eliminated. Operationally, the use will remain in a location that is preferable for Hancock Village residents. There will be fewer truck trips to service the building than with the existing configuration. Lastly, the Health Department supports this proposal because it is a significant improvement to the refuse service from a public health perspective. (3) There will be no nuisance or serious hazard to vehicles or pedestrians: These specific items were reviewed at length over the course of three Planning Board meetings that resulted in significant changes to the site plan, including rotating and sinking the building so pickup/drop-off operations are contained entirely within the parking lot instead of on Asheville Road. Other potential locations were also discussed at length and it was determined that the other locations were not only infeasible because of topography and grading, but they also recreated the same pedestrian and vehicle safety issues that are solved by the current plan. The Planning Board

also acknowledged the other locations suggested are closer to HV residents than the proposed one. Lastly, there is a designated pull-off area on Asheville Road for residents to safely pull over to deposit their trash. (4) Adequate and appropriate facilities will be provided for the proper operation and proposed use: The proposed facility is specifically designed to handle trash and recycling. The building design was upgraded during the Planning Board's review, including sound-proof insulation, an acoustically-rated garage door, and an odor mitigation system. The site plan changes also ensure the facility operations are conducted safely away from ped/vehicle traffic on Asheville Road. (5) There will be NO effect on the supply on housing available for low- and moderate-income people. This proposal does not have an adverse impact on the supply of low- and moderate-income housing. In fact, easy and convenient trash service is a valuable amenity for residents and this property is an important rental property in the town.

In conclusion, Mr. Allen opined that the requested special permit relief is minor and sufficiently counterbalanced. He noted that the Petitioner worked diligently with the planning staff, the Planning Board, and the neighborhood to arrive at the proposal before the Board.

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

Chair Zuroff then asked whether anyone was present to speak in opposition to the proposal. Judith Leichtner, TMM Precinct 16, 121 Beverley Road, stated that the proposed plan is a better plan than what was originally proposed. She stated that the neighbors would have preferred something deeper into the property. She stated that she is concerned that the units that will be closest [to the center] will be less desirable and they might be the affordable units in the project. At the request of Chair Zuroff, Mr. Martineau stated that there are no affordable units in Building 9, the building closest to the proposed center. Mr. Levin added that the location of the affordable

units was identified and designated during the financing phase of the project and there are none in Building 9.

Chair Zuroff then called upon Karen Chavez, Planner & Zoning Coordinator, to deliver the findings of the Planning Board:

FINDINGS

§4.07 – TABLE OF USE REGULATIONS, USE #61 - Non-commercial greenhouse, tool shed, or other similar accessory structure. A special permit is required if in excess of 150 square feet of gross floor area. The proposed recycling center building will be +/- 660 SF.

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.50 - FRONT YARD REQUIREMENTS - A setback of at least 25 feet for an M-0.5 district shall be provided between the front lot line or lines and the nearest point of any building or structure.

§6.04.5.C.1 – DESIGN OF ALL OFF-STREET PARKING FACILITIES - (The setback for the parking area does not meet the requirements of the Zoning By-Law)

ZONING: M-0.5	Required/Allowed	Proposed	Relief
Front Yard (Building)	25'	20'	Special Permit ¹
Front Yard Setback (Parking)	25'	15.25'	Special Permit ¹

¹§5.43: Relief from setback requirements can be granted through Section 5.43 which states that relief may be granted if the applicant can provide an adequate counterbalancing amenity that mitigates negative impacts arising from the requested deviation from the requirements of the Zoning Bylaw.

PLANNING DEPARTMENT COMMENTS

Ms. Chavez stated that the Planning Department is supportive of this proposal. She stated that the proposed recycling building will be a significant improvement to the trash and recycling program at Hancock Village. She added that the planning staff received a letter from the Health Department supporting the new recycling center as it will address the issues with containing trash and recycling on site. Additionally, the adjacent property is also part of Westbrook Village.

PLANNING BOARD RECOMMENDATION

Ms. Chavez stated that the Planning Board initially reviewed this project at their meeting on January 28, 2021. She stated that the Board was concerned with the location of the building and requested that the applicant provide a list of alternative locations that had been considered. Ms. Chavez stated that the applicant returned to the Board on February 25, 2021 and again on March 25, 2021 with revised plans. At the March 25 meeting, Ms. Chavez noted, the applicant submitted a plan that relocated the proposed trash and recycling center further south and reoriented the building to face the new parking lot. She stated that the Board felt that this solution was a significant improvement that resolved concerns about circulation and loading zones. Ms. Chavez stated that the Board also felt that the proposed landscape plan is excellent and would successfully screen and mitigate any negative impacts from the facility.

Therefore, Ms. Chavez stated, The Planning Board recommends approval of the site plan by Stantec, dated March 14, 2021, the architectural plans by Lowe Associates Architects, Inc., dated 11/02/2020, and the landscape plan by Stantec, dated March 14, 2021; subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect, and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be executed in accordance with the approved plan.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; and b) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

Chair Zuroff then called upon Paul Campbell, Deputy Building Commissioner, to deliver the findings of the Building Department. Mr. Campbell stated that the Building Department has no objection to the requested relief and should the Board grant the requested relief, will work with the Petitioner to ensure compliance with the Board's decision and all state building codes.

Board Member Palermo stated that the Planning Board worked diligently to improve the original proposal. She stated that the proposal before the Board very clearly meets the requirements under Section 9.05 for the grant of special permit relief and stated that she was in favor of granting the relief as requested. Board Member Meiklejohn stated that the project is a successful design solution given the topography. He stated that his previous questions were seeking to understand why the relief was required and was satisfied that it had been handily demonstrated. He noted that the proposal has prioritized safety and appreciated that a realistic approach had been given to consider the movement of vehicles, both for the residents and the service vehicles. Board Member Meiklejohn concluded his remarks by adding that it was evident that the diligence was done in seeking an appropriate design solution and stated that the Section 9.05 conditions were met, and voted in favor of the requested relief. Chair Zuroff concurred with Board Members Palermo and Meiklejohn and stated that the application was well presented. Chair Zuroff stated that he appreciated the efforts that were made by the Petitioner to work with the Planning Board. He noted that the proposed center will be an improvement to the existing trash and recycling condition and meets all the criteria enumerated under Section 9.05. Chair Zuroff noted that the landscape amenities proposed satisfied the criteria under Section 5.43 to counterbalance the requested setback relief for the accessory structure in the front yard setback and the parking in the front yard setback.

The Board then determined, by unanimous vote to grant a special permit to allow the proposed accessory structure to exceed 150 square feet pursuant to Section 4.07 Use #61 and to grant setback relief from the provisions of Sections 5.50 and 6.04.5.C.1 for front yard setback for the setback of the accessory structure in the front yard and parking proposed in the front yard, respectively, pursuant to Section 5.43 the Zoning By-Law pursuant to Section 9.05 of the Zoning By-Law were met.

The Board made the following specific findings pursuant to 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 not have any effect on the supply of housing available for low- and moderate-income people.

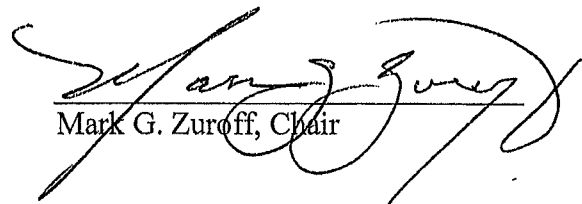
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect, and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be executed in accordance with the approved plan.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; and b) evidence that

the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: 5/24/21


Mark G. Zuroff, Chair

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals