



Town of Brookline Massachusetts

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Benjamin Kaufman, Clerk

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Johanna Schneider

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE 2021-0036
MODIFICATION OF PRIOR ZBA DECISIONS
1989 #2983 AND 2009 #090017
CAROLINA TRUJILLO
219 GARDNER ROAD, BROOKLINE, MA

Robert L. Allen, Jr., Attorney for the Petitioner, applied for an administrative modification of two prior Zoning Board of Appeals decisions: #2983 from 1989 and a 2009 decision case #090017.

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 8, 2021 at 7:00 PM., virtually 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 March 25, 2021 and April 1, 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: **219 Gardner Road**

Petitioner: **219 Gardner Road LLC**
Zoning District: **SC-10 (Single-Family & Converted For Two-Family)**
Precinct: **12**
Description: **Modify ZBA decision of 1989 to account for discrepancy on survey**

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

Date: **04/08/2021**
Time: **7:00 pm**
Location: **Virtual Meeting (see below)**

Register for this virtual hearing:

<http://bit.ly/30Qf8WL>

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:

Modification of prior ZBA decision

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 Zuroff
Johanna Schneider*

Publish: 03/25/2021 & 04/01/2021

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Jesse Geller and Board Members Lark Palermo and Randolph Meiklejohn. Also present at the hearing was Assistant Director for Regulatory Planning, Polly Selkoe; Zoning Coordinator and Planner, Karen Chavez; and Deputy Building Commissioner, Paul Campbell.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr., P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts. Also present was the surveyor, Joe Porter, VTP Associates 132 Adams St 2nd Floor Suite 3, Newton, MA 02458.

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

Attorney Allen stated that the homeowners at 219 Gardner Road and 189 Tappan Street are both impacted by the modification and noted that Mr. Allen had spoken with the owner of 189 Tappan Street, Mark Grinstaff, who was supportive of the correction to the ANR.

Mr. Allen stated that Mr. Porter was contracted to survey the property at 219 Gardner Road. He stated that while Mr. Porter was reviewing the historic records of the property he discovered an error that was made in the 1989 survey that was subsequently carried over to the 2009 survey. Mr. Allen stated that the source of the discrepancy is due to the distance along Rawson Path, which should be 50 feet based on the 1885 and 1888 plans; the 2009 plan by Boston Survey shows the distance as 57 feet. Attorney Allen stated that the impact of this discrepancy is twofold: 1) The property line that bounds 189 Tappan Street

to the northeast runs through the existing home on the lot at 120 Rawson Path; and 2) The Zoning By-Law requires that flag-shaped lots must maintain a 25-foot-wide corridor of land beyond the frontage to where the lot widens. By adjusting the property line to have the correct 50 feet Rawson Path dimension, the property line between 120 Rawson Path and 189 Tappan Street to the south narrows a portion of the corridor, creating a 2.5-foot deficiency.

Mr. Allen stated that this erroneous measurement underlies two ZBA decisions: 1) In 1989, by decision #2983, the ZBA approved a subdivision at 219 Gardner Road and 189 Tappan Street. The decision resulted in the subdivision of a carriage house from what was the main single-family home on the property. The ZBA decision was based on an ANR that provided a 25-foot-wide frontage along Tappan Street. 2) In 2009, by decision #090017, the ZBA approved zoning relief to permit a common driveway between the carriage house lot at 189 Tappan Street and the main house at 219 Gardner Road.

Mr. Allen stated that a zoning analysis of the impact of this change showed that it does not create any infectious invalidity on either lot. Specifically, Mr. Allen stated that based on the Assessor's records, while the 189 Tappan Street lot would be reduced by approximately 188 square feet, there would be approximately 1,408 square feet available before the maximum allowed FAR would be met.

Upon inquiry from Chairman Geller, Mr. Allen clarified that the modification request is not to allow a reduction of the corridor to 22.5 feet, but to modify the prior decisions by substituting the revised survey dated December 9, 2020 that provides for the correct distance along Rawson Path, and adjusts an existing interior lot line between 219 Gardner Road and 189 Tappan Street to provide a conforming 25-foot-wide corridor. Mr. Allen stated that the owners of both 189 Tappan Street and 219 Gardner are supportive of this administrative remedy to bring both lots into conformance with the ZBA's prior granted relief.

Board Member Palermo clarified that as far as Attorney Allen is aware, the survey for 120 Rawson

Path is correct and it was the survey that subdivided 189 Tappan Street from 219 Gardner Road that is creating an overlap that would be rectified with the new ANR subdivision plan. Attorney Allen confirmed this to be the case.

Chairman Geller then asked whether anyone was present to speak in favor of or in opposition to the proposal. No public comments were submitted.

Chairman Geller then called upon Polly Selkoe, Assistant Director of Regulatory Planning to deliver the comments of the Planning Department. Ms. Selkoe stated that it is the appropriate order of action to first bring the request before the ZBA and then provide the amended ANR subdivision plan to the Planning Board for signature.

The Board then deliberated on the requested modification of the two prior ZBA decisions. Board Members Palermo and Meiklejohn were supportive of the request. Chairman Geller was supportive and stated that the modification the Board was approving would delete the previous references to the subdivisions that were approved in 1989 and 2009, and substitute the December 9, 2020 subdivision plan attached hereto as Exhibit A (the "New Subdivision Plan").

Accordingly, the Board voted unanimously to modify decisions: #2983 from 1989 and a 2009 decision case #090017, the relief granted in said decisions shall rely upon the subdivision prepared by VTP Associates dated December 9, 2020 that provides a 25-foot-wide corridor for 189 Tappan Street and addresses an overlap of property lines between 189 Tappan Street and 120 Rawson Path, subject to the following additional condition (and without limitation or waiver otherwise of the conditions contained in the prior decisions amended hereby):

1. The Board's grant of the requested modification shall not become final until the New Subdivision Plan signed by the Planning Board is recorded at the Norfolk Registry of Deeds.

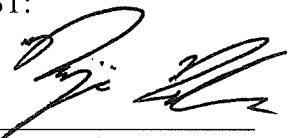
Unanimous Decision of
The Board of Appeals

Filing Date: 6/10/21



Jesse Geller, Chair

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals

