



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Mark Zuroff
Johanna Schneider

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TOWN CLERK'S OFFICE
JUN 23 '22 AM 9:18

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-00071
761 WASHINGTON STREET

Petitioners Sangmi Lee and Robert Shin applied to the Building Commissioner for permission to construct a two-family dwelling. 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 March 24, 2022, 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 March 10, 2022, & March 17, 2022, 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: 761 Washington Street
Petitioner: SHIN, ROBERT & SANGMI, LEE

Zoning District: **T-5 (Two-Family & Attached Single-Family)**
Precinct: **11**
Description: **Construct a new two-family attached dwelling**

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

Date: **03/24/2022**
Time: **7:00 pm**
Location: **Virtual Meeting (see below)**

Register for this virtual hearing:

<https://bit.ly/3hBIH6L>

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 #05

§5.09.2.A – DESIGN REVIEW

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§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 **Polly Selkoe** (pselkoe@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: 03/10/2022 & 03/17/2022

On March 24, 2022, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chair Jesse Geller and Board Members Mark Zuroff and Neil Wishinsky. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., RLAW P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance was the project architect, Elizabeth Whittaker, 332 Congress Street, 6th floor, Boston, Massachusetts, and landscape architect, Kate Kennen, Offshoots Inc., 547 Rutherford Avenue, Charlestown, Massachusetts. The Petitioners, Sangmi Lee and Robert Shin, were also in attendance.

Zoning Board of Appeals Chair Geller called the virtual hearing to order at 7:00 pm. Chair Geller reviewed the standard hearing procedure for virtual hearings and confirmed that all Board Members and staff could visually and auditorily engage in the hearing. Attorney Allen waived a reading of the published notice.

Chair Geller stated that ZBA Case #2021-0071 at 761 Washington Street (“Revised Petition”) was subject to M.G.L. Ch. 40A, Section 16 since it was a petition submitted within two years of an unfavorable action by the Board of Appeals, as the result of its prior withdrawal with prejudice. Therefore, Chair Geller continued, before the Board of Appeals could decide substantively on the requested zoning relief, it had to first decide whether the changes made to the project constituted specific and material changes in the conditions upon which the withdrawal with prejudice had been based.

Attorney Allen presented the case for the Petitioners. Attorney Allen reviewed the history of submittals for a proposal at 761 Washington Street and stated that in May of 2020, an application

("Prior Petition") to construct a two-family dwelling was withdrawn with prejudice as a result of one Board of Appeals member citing concerns related to design, massing, and lack of neighbor support regarding the Prior Petition. He added that though the Prior Petition had the unanimous support of the Planning Board, only two of three Board of Appeals members expressed their inclination to vote to grant the requested zoning relief. Attorney Allen further stated that changes had been made since the Prior Petition as reflected in the Revised Petition and that the Petitioners reached out to 60 of their neighbors and spoke with everybody who responded in connection with the Revised Petition. He described correspondence between the Petitioners and the immediate abutters at 757 Washington Street, who had also been included in an on-site meeting with the design team to discuss landscaping and building setbacks. Attorney Allen continued that there were changes and compromises made to the design and acknowledged that these changes made a better project overall for the neighborhood. Attorney Allen noted that two letters had been submitted in support of the Revised Petition.

Chair Geller stated that by statute in order for the current application to move forward, the Petitioners would have to demonstrate that the dissenting Board Member's objections to the Prior Petition were satisfactorily ameliorated by material changes in the Revised Petition. Ms. Whittaker, then reviewed the proposed plans and the modifications made to both design and massing to demonstrate how the project had changed.

In reliance on a digital presentation, Ms. Whittaker reviewed renderings of the Revised Petition in comparison with the Prior Petition. Ms. Whittaker also discussed how the project had changed dimensionally, noting a reduction of nearly 1,000 square feet, and reviewed other design modifications, including the removal of decks at the rear of the building and changes to materials. After discussing the newly proposed floor plans and revised elevations, Ms. Whittaker presented a rendering depicting how the proposed two-family would fit into the streetscape. She then

reviewed changes to the building setbacks and analyzed how the proposed setbacks were now more consistent with the abutting structures.

Ms. Kennen, then presented the landscaping plan. Also in reliance on a digital presentation, she described the proposed retaining wall between 761 and 757 Washington Street to replace the existing wall. Ms. Kennen lastly reviewed the proposed landscaped areas and hardscaped spaces on the site.

Attorney Allen then summarized the objections that Board Member Palermo had voiced regarding the design of the Prior Petition: the design not fitting in with the streetscape and the massing being inconsistent with the neighborhood. Attorney Allen cited the footprint analysis presented and setback changes made to demonstrate that material changes were made to address her objections. He emphasized that the Prior Petition lacked such a massing study and added that Board Member Palermo's concerns could be understood as lot coverage. Attorney Allen suggested that the study showed that the Revised Petition's reductions in footprint and massing were significant.

Attorney Allen then reviewed the requested zoning relief, stating that a special permit is required under **Section 4.07** to allow attached single-family dwellings. Under **Section 5.09.2.A**, he continued, a special permit is required for design review because the property is within 100 feet of Washington Street. Attorney Allen further stated that a special permit may be granted to allow the construction of the new two-family, subject to the Community and Environmental Impact and Design Standards. He noted that the Planning Board, which is charged with reviewing whether the standards are met and making a recommendation to the Zoning Board of Appeals, had voted unanimously to support the proposal after it reviewed an impact statement detailing the project's satisfaction of those standards. Attorney Allen continued that a special permit is required under **Section 6.04.5.C.1** for the parking proposed within the front yard setback along Bartlett Crescent.

He described the property as having two front yards and noted that the parking would be along what is used as an alley and located on the side of the building that functions as its rear. He stated that the required setback along Bartlett Crescent is 23.11-feet, while the proposed is a setback of nine-feet. Attorney Allen argued that relief for this setback could be granted under **Section 5.43** if counter balancing amenities are provided. Attorney Allen stated that proposed counterbalancing amenities include a robust landscaping plan that resulted from thoughtful consideration of the treatment between the two properties, 757 and 761 Washington Street. He continued that these details include the design of the retaining wall, and the selection of plant species, which had been chosen specifically for their hardiness and ease of maintenance.

Attorney Allen then reviewed the special permit requirements enumerated in **Section 9.05**, stating the following: 1) Specific site is an appropriate location for such use: The site is appropriate for the proposed use of the home as two attached single-family dwellings, since it is an allowed use in the T-5 district by special permit. 2) Use will not adversely affect the neighborhood: The home will continue to be used as a two-family dwelling, which is consistent with many homes in the neighborhood. The lot is also surrounded by two-and multi-family dwellings. The revised proposal will comply with setbacks pertaining to the main structure, while the driveway and garage, which had been thoroughly incorporated into the landscaping plan, were designed to have minimal impact on abutters and the neighborhood. 3) There will be no nuisance or serious hazard to vehicles or pedestrians: The property's on-site circulation will not cause a nuisance or serious hazard to vehicles or pedestrians. The new garage will provide adequate parking and keep two more vehicles off the street. This will be an improvement to the existing condition. 4) Adequate and appropriate facilities will be provided for the proper operation and proposed use: Adequate and appropriate facilities will be provided for the proper operation of two attached single-family

dwelling. 5) There will be NO effect on the supply on housing available for low and moderate income people.

Attorney Allen concluded his remarks by stating that, while the proposal still includes the demolition of the existing two-family dwelling and two-car garage to construct a new two-family dwelling, specific and material changes have been made to the project proposed in the Prior Petition, which related to massing, design, and neighbor outreach. He stated that another way to review if specific and material changes have been made is to look at the reduction in the zoning relief needed. Attorney Allen stated that, in addition to all relief required for the Revised Petition, the 7,675 square foot two-family dwelling in the Prior Petition also needed special permit relief for the setback of the structure and for the width of the garage, which was to be more than 40% of the length of the façade. Attorney Allen then stated that the Revised Petition is for a 6,374 square foot two-family dwelling with a total FAR of .81, a number he noted was well under the allowed maximum FAR of 1.0. He closed by stating that the proposed structure had been designed to comply with all setback requirements and to provide ample usable and landscape space.

Chair Geller noted that Board Member Palermo had two significant objections: massing and the non-traditionalist design of the structure. The Board of Appeals then discussed whether the changes that were made satisfied the standard of M.G.L. Ch. 40A Section 16—that is, whether they constitute specific and material changes in the conditions upon which the withdrawal with prejudice was based. The Board of Appeals requested additional information to demonstrate how the Revised Petition meets the threshold of material and substantial change and voted to continue the hearing to April 14, 2022 at 7:00 pm.

At the continued hearing on April 14, 2022, Zoning Board of Appeals Chair Geller reviewed the standard hearing procedure for virtual hearings and confirmed that all Board Members and staff could visually and auditorily engage in the hearing.

Chair Geller stated that the Board of Appeals received a memorandum with an attached affidavit from Architect Stephen Sousa of Sousa Design dated April 8, 2022, a copy of which is attached hereto as Exhibit 1. Attorney Allen summarized the memorandum and stated the following: that the Petitioners had materially revised their proposal from that submitted in the Prior Petition on October 8, 2020 and that the changes to the Revised Proposal, taken together, result in a building with less mass, greater setbacks, less required zoning relief, and a more traditional architectural style, and that the changes were responsive to the grounds of potential refusal discussed by Board Member Palermo at the prior hearing.

Attorney Allen then argued that the changes should not be viewed individually because, when viewed together, they result in a project that is smaller in density and mass, has reduced the amount of zoning relief required, and is much “better integrated within the surrounding context using a contemporary expression of more traditional design features than the previous proposed project.” *See* Exhibit 1. Attorney Allen argued that it was the perceived lack of architectural integration with a nearby cluster of six homes that caused Board Member Palermo to object to the prior proposal. Attorney Allen concluded that the Petitioners’ changes directly responded to those objections and were specific and material within the meaning of the statute.

The Board of Appeals discussed the document, with Chair Geller expressing his belief that the memorandum provided sufficient analysis and support for the Board to determine that the threshold under M.G.L. Ch. 40A Section 16 had been satisfied. The Board of Appeals unanimously agreed that the procedural matter had been resolved and that the Revised Petition could move forward.

Chair Geller then called for public comments in support of or in opposition to the Petition. No public comments were submitted.

Chair Geller then called upon Senior Planner Maria Morelli to present the Planning Board report.

FINDINGS

ZONING: T-5	Required/ Allowed	Existing	Proposed	Relief Required
Use	2 attached dwellings	Two-family dwelling	2 attached dwellings	<u>Special Permit</u> ¹
Lot Area (sq. ft.)	5,000 sf	7,824 sf	7,824 sf	None
Floor Area Ratio	1.00 / 100% 7,824 sf	0.53 / 53% 4,176 sf	0.81 / 81% 6,374 sf	None
Height (feet)	35'	39'	35'	None
Setbacks (feet)				
➤ Front (Washington Street)	27.43'*	19.4'	29.3'	None
➤ Side (left)	10'	8'	10.2'	None
➤ Side (right)	10'	19.2'	10.2'	None
➤ Front (Bartlett Crescent)	23.11'*	42.3'	30.1'	None
Open Space				
➤ Landscaped	10% / 637sf	Unknown	30% / 1,922sf	None
➤ Usable	30% / 1,912sf	Unknown	36% / 2,324sf	None
Parking	4	Unknown	4	None

* Setbacks determined by average alignment, Section 5.54 of the Zoning By-law

¹**Section 4.07, Table of Use Regulation, Use 5:** Two-family dwellings where units are located in the same building and separated by a party wall or, in other words, two attached single-family dwellings require a Special Permit.

Other Zoning Relief

Section 5.09.2.A, Design Review: Because this property is located on Washington Street, the project requires Design Review. See the applicant Impact Statement for how the project complies with Community and Environmental Impact and Design Standards.

Section 6.04.5.C.1 – Design of All Off-Street Parking Facilities: This section requires that any parking area (except access drives) be set back from a front lot line the same setback required for a front yard under Section 5.01, Table of Dimensional Requirements, or as modified by the average of existing alignment. In this case, the required setback is 23.11' from Bartlett Crescent and the parking spaces are set back approximately 9'. Relief from this section can be granted through Section 5.43, which allows the Zoning Board of Appeals to waive setback requirements

if the applicant offers a counterbalancing amenity that fulfills the same purpose as would have been fulfilled by the provision of the required setback area.

PLANNING DEPARTMENT COMMENTS

Ms. Morelli stated that the Planning Department is supportive of this proposal and added that the property is close to a commercial area and a school and can reasonably accommodate additional density and redevelopment. She stated that the proposed building has been well-designed, meets all dimensional requirements of the By-Law, and is consistent in scale with both the existing building and buildings on surrounding properties. Ms. Morelli continued that, regarding the applicant's request to reapply within two years of withdrawing with prejudice, planning staff believes that the request should be granted. She noted that the prior withdrawal was based on the ZBA's decision that the Special Permit could not be granted because it did not meet the requirements of Section 5.09 (Design Review), which are primarily concerned with massing, scale, and design. She continued that the applicant has made fairly significant changes to elements of the project directly related to massing, scale, and design, even to the extent that such changes have eliminated some of the previously needed zoning relief citations (Sections 5.09.2.n and 6.04.14) and added that the applicant has made consistent and significant efforts over the last three years to respond to the concerns of neighbors, the Planning Board, and the Zoning Board of Appeals.

PLANNING BOARD RECOMMENDATION

Ms. Morelli stated that the Planning Board voted unanimously to recommend approval of the proposed two-family home. She noted that the Planning Board Members were pleased that the overall volume was reduced, which improved the scale of the project and added that the Board was supportive of the landscape plan, which was very detailed and accommodating of abutters' requests. Ms. Morelli stated that while some Board Members preferred earlier iterations of the building's design and considered the current proposal to be weaker in terms of overall design

integrity, the Board acknowledged the Applicants' efforts to accommodate a myriad of neighbors' concerns; therefore, Board Members did not recommend changes to the design as a condition of approval in an effort to defer to the lengthy neighborhood review process.

Therefore, Ms. Morelli stated that the Planning Board recommends approval of the site plan by VTP Associates, dated 8/19/21 and architectural plans prepared by Merge Architects, dated 2/11/22, subject to the following conditions:

1. As required by M.G.L. c.40A, Section 16, the Planning Board consents to the reapplication for this project, which was withdrawn with prejudice within the previous two years, on the grounds that the revised proposal includes specific and material changes in the conditions upon which the previous unfavorable action was based.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a final roof plan with materials indicated, and 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.
3. 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.
4. 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, floor plans, and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; 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 Geller then called upon Paul R. Campbell, Deputy Building Commissioner, to deliver the findings of the Building Department. Mr. Campbell stated that the Building Department concurred with the Planning Board analysis and added that, should the Board grant the requested relief, the Building Department would work with the Petitioners to ensure conformance with the Board's decision and all applicable building codes.

In discussion, Board Member Wishinsky stated that he appreciated the effort to collaborate with the neighborhood and noted the lack of opposition at the hearing. He expressed his opinion

that material changes had been made and stated, in reference to the conditions provided in **Section 9.05**, that the special permit standards were satisfactorily met. Board Member Zuroff concurred, commending the Petitioners for working with the neighborhood, and voiced his support for granting the special permit relief as requested. Chair Geller stated that the procedural test was met based on the following: material changes were made to the design, including those resulting from additional neighbor outreach, the outlining of material changes in the provided Sousa Affidavit, and the cues from abutting properties that had been taken and incorporated into the design. He further stated that, for the reasons stated by Board Member Wishinsky, the Revised Petition meets the requirements under **Section 9.05** for a special permit. The Board then determined by unanimous vote that the proposal met the requirements for a special permit under **Section 4.07**, Table of Use Regulations, Use #05, to allow two attached single-family dwellings, and under **Section 5.09.2.a**, for design review. The Board of Appeals also voted to grant a special permit to waive the setback requirement for parking under **Section 6.04.5.c.1**, finding that the proposed counterbalancing amenities, if installed, would be sufficient under the requirements of **Section 5.43**.

In addition, the Board made the following specific findings under **Section 9.05** based on the evidence submitted at the hearing and the Board's deliberations:

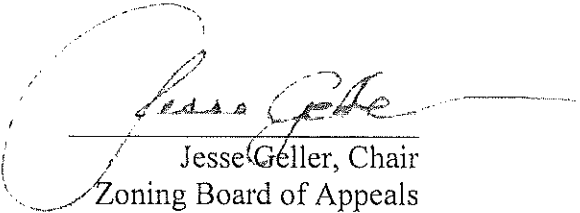
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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. As required by M.G.L. c.40A, Section 16, the Planning Board consents to the reapplication for this project, which was withdrawn with prejudice within the previous two years, on the grounds that the revised proposal includes specific and material changes in the conditions upon which the previous unfavorable action was based.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a final roof plan with materials indicated, and 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.
3. 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.
4. 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, floor plans, and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; 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

JUN 23 2022



Jesse Geller, Chair
Zoning Board of Appeals

Filing Date: _____

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals