



# Town of Brookline

## Massachusetts

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**BOARD OF APPEALS**  
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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2022-0015  
63 PAYSON ROAD

Petitioners Anne Merewood and Gerassimos Makrigiorgos applied to the Building Commissioner for permission to divide a lot and to create two additional parking spaces on the resulting new lot. 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 28, 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 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 7, 2022, & April 14, 2022, in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

### **NOTICE OF HEARING**

**The Brookline Zoning Board of Appeals will hold a virtual public hearing via ZOOM on Thursday, April 28, 2022 at 7:00pm**

**Registration Link: <https://bit.ly/3NCWAQQ>**

The ZBA will consider the following pursuant to M.G.L. 40A & the Brookline Zoning-Bylaw:

**Petitioner:** Anne Merewood and Gerassimos Makrigiorgos

**Address:** 63 Payson Road

**Zoning:** S7

**Precinct:** 16

**Description:** Divide lot and create 2 additional parking spaces on new lot

**The Board will consider variances and/or special permits from the following sections of the By-law (and any additional zoning relief the Board deems necessary):**

**§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**

**§6.03.1.A – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES**

**§6.03.1.B – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES**

**§6.04.4.E – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

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

**§6.04.5.C.2 – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**§6.04.5.D – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**ANY OTHER RELIEF THE BOARD MAY FIND NECESSARY**

***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](mailto:pselkoe@brooklinema.gov)).*

*All plans and submissions may be found at:*

*<https://brooklinema.gov/DocumentCenter/Index/2352>.*

*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](mailto:vpanak@brooklinema.gov), or by checking the Town meeting calendar at: [www.brooklinema.gov](http://www.brooklinema.gov).*

**Assistive Listening Devices** are available upon request:

**<https://www.brooklinema.gov/560/Americans-With-Disabilities-Act-ADA>**

*Jesse Geller, Chair*

*Mark Zuroff*

*Johanna Schneider*

**Publish: 4/7/2022 & 4/14/2022**

On April 28, 2022, the Zoning Board of Appeals held a public hearing. Present at the hearing were Chair Johanna Schneider and Board Members Mark Zuroff and Neil Wishinsky. The Zoning Board of Appeals voted unanimously to continue the matter of 63 Payson Road, Case #2022-0015, to July 21, 2022, without discussion.

On July 21, 2022, the Zoning Board of Appeals held a public hearing for the proposal at 63 Payson Road. Present at the virtual hearing were Chair Johanna Schneider and Board Members Neil Wishinsky and Paul Bell. The case was presented by the attorney for the Petitioners, Robert L. Allen, Jr., RLAW P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance were the Petitioners and the project landscape architect, Katya Podsiadlo, Verdant Landscape Architecture, 318 Harvard Street, Suite 25, Brookline, Massachusetts.

Zoning Board of Appeals Chair Schneider called the virtual hearing to order at 7:00 pm. Chair Schneider 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.

Attorney Allen presented the case for the Petitioners. He stated that the Petitioners purchased the home at 63 Payson in 2001 and that they now propose to subdivide the parcel, which is currently in an S-7 Zoning District, into two lots. Attorney Allen continued that one of the resulting lots would contain Petitioners' existing home, while the other would both continue to serve as a parking area for the Petitioners and to provide space for a potential cottage home for the Petitioners' son and his family. He continued that, as necessary counterbalancing amenities to the waiver of dimensional requirements for parking, the project would be accompanied by landscaping and fencing to screen the parking area from abutting neighbors, both of whom, Attorney Allen noted, had offered their support for the proposal.

Attorney Allen then stated that a memorandum was provided to the Board of Appeals to address any potential concerns regarding the timing as it relates to granting a special permit prior to recording and ANR. He continued that the memorandum provided examples of cases in which

the Board had granted Special Permit relief prior to recording and ANR, as well as sections of the Zoning By-Law that encourage applicants to abide by this procedure.

Chair Schneider then asked whether relief was also needed from the 10% maximum grade requirement of **Section 6.04.4.E**. Attorney Allen responded that the condition may be a preexisting nonconformity. The Deputy Building Commissioner, Paul Campbell, stated that while the condition was unlikely to constitute a preexisting nonconformity, the grade of the parking area was nevertheless a dimensional requirement from which the Board could grant special permit relief under **Section 5.43**.

Ms. Podsiadlo then presented the landscaping plans. Relying on a digital presentation, Ms. Podsiadlo described the existing conditions at 63 Payson and noted the 14% grade of the parking area, a fence, and an area for gardening, all of which contribute to the difficulty of leveling the area. Ms. Podsiadlo added that evergreens and some small deciduous trees would be planted and that the existing fence would be relocated on the right side of the new lot to provide a buffer between it and the abutters at 69 Payson. She further stated that the property abuts against a burial ground at its rear and that a new curb is proposed for the parking area, albeit with a three-foot setback where five feet is required.

Chair Schneider then inquired into the location of the parking spaces. Ms. Podsiadlo, in reference to the landscaping plan, identified four rectangles at the front-left corner of the proposed new lot as the area allocated for parking. Chair Schneider subsequently requested that Attorney Allen detail the Petitioners' plans to accommodate the request of Todd Cantor, Deputy Chief of the Brookline Fire Department, that no fencing or landscaping be installed that might inhibit access for firefighters. Attorney Allen responded that pursuant to the request, neither fencing nor landscaping would be installed at the front of the property.

Board Member Wishinsky inquired as to whether the parking spaces' proximity to one another satisfied the requirements of the Building Department. Mr. Campbell responded that such "tandem" parking is permissible.

Chair Schneider then asked how cars would access the parking spots. Attorney Allen responded that the present arrangement, in which drivers reverse into the spots, would continue.

Attorney Allen then reviewed the requested zoning relief. He stated that special permit relief was sought to waive the front-yard setback requirement of twenty feet under Zoning By-Law **Section 6.04.5.C.1** and the side-yard setback requirement of five feet under **Section 6.04.5.C.2**. Attorney Allen continued that the proposed front yard and side yard setbacks would be 12 feet and 3 feet, respectively. He further stated that such special permit relief could be provided under **Section 5.43** because the landscaping and fencing changes reviewed by Ms. Podsiadlo constitute "counterbalancing amenities," as required by that section for the issuance of special permit relief from dimensional requirements. He next stated that relief from the 10% maximum grade requirement of **Section 6.04.4.E** was also required and available by special permit under **Section 5.43**. Lastly, he stated that special permit relief was sought to waive the requirement of **Section 6.03.1A** that off-street parking facilities be provided on the same lot or premises as the principal use served. Attorney Allen stated that under **Section 6.03.1.B**, the Zoning Board of Appeals can waive this requirement when it cannot be met and when the principal use served is within 400 feet of the parking facilities. He noted that the steep grade of the lot made such on-site parking impossible without blasting, while the planned location of the parking was well within 400 feet of the principal use being served.

Attorney Allen then reviewed the special permit review standards enumerated in Zoning By-Law **Section 9.05**, stating the followings: 1) **Specific site is an appropriate location for such**

use: The area has been used for parking for at least 21 years and will continue to be used for parking. 2) Use will not adversely affect the neighborhood: The use, parking, is consistent with the rest of the neighborhood, which is residential in nature and also contains dedicated areas for parking. Moreover, the proposal would avoid blasting and has been met with support from the Petitioners' immediate side-abutters. 3) No nuisance or serious hazard to vehicles or pedestrians: Cars have been parking at the location without incident since at least 2001. 4) Adequate and appropriate facilities will be provided for the proper operation and proposed use: The project will comply with all applicable codes and town requirements, and a condition will be added to address concerns raised by the Fire Department. 5) Development will not have any effect on the supply on housing available for low and moderate income people. In fact, the cottage home that Petitioners are considering for the newly created lot would provide moderately sized housing.

Chair Schneider then asked for questions and comments from the Board. No statements or questions were made.

Chair Schneider then called for public comments in favor of or in opposition to the Petitioner's proposal. No public comments were made.

Chair Schneider then called upon Planner and Zoning Coordinator Madison Anthony to present the Planning Board report.

## **FINDINGS**

### **Zoning Relief Needed**

#### **§6.04.4.E – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

*The grade of the driveway within 20' of the street shall not be greater than 10%, and the car must be visible from the street while exiting the driveway. The applicant states THAT THE GRADE IS 14%, NOT 8 ½ % AS PREVIOUSLY REPORTED; therefore, **relief is necessary.***

#### **§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**

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

#### **§6.04.5.C.2 – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

#### **§6.04.5.D – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

<b>ZONING: S-7</b>	<b>Required/ Allowed</b>	<b>Existing (two cars)</b>	<b>Proposed (four cars)</b>	<b>Relief</b>
<b>Front Yard</b>	20'	8.1'	5.6'-12'	<b>Special Permit*</b>
<b>Side Yard</b>	5'	8.5'	3'	<b>Special Permit*</b>

*\*Under Sec. 5.43, a counterbalancing amenity can serve to waive the yard setbacks. Landscaping is proposed as the counterbalancing amenity and includes a new wood fence designed to accommodate vines; a variety of shrubs, including hydrangeas; and evergreen screening.*

**§6.03.1.A – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES**

**§6.03.1.B – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES**

*Required parking must be on the same lot as the principal use. Where the requirement cannot be met a special permit may authorize the required parking within 400' on a lot of the same ownership.*

**PLANNING DEPARTMENT COMMENTS**

Ms. Anthony stated that the Planning Department has concerns about this proposal. She continued that by subdividing the lot, it makes the lot of the existing single-family home non-conforming by removing the portion of the lot where there is currently a parking area and making it part of the new lot. Ms. Anthony added that the proposal exists because vehicular access to the lot with the existing house would be difficult, if not impossible, because of the steep grade. She further stated that a requirement for Planning Board endorsement of an ANR plan would be vehicular access to the lot with the existing house and such access must not be “illusory.” Ms. Anthony continued that the severe grade of the new lot prevents locating a parking area outside of the front and side yard setbacks.

**PLANNING BOARD RECOMMENDATION**

Ms. Anthony stated that the Planning Board is supportive of allowing parking on the adjacent lot when it is created through an ANR plan. She noted, however, that the Planning Board would like the applicant to show pedestrian access from the street to the existing house using the

existing house lot only.

Therefore, Ms. Anthony stated that the Planning Board voted to recommend approval of the site plan by Curtis Johnson, Express Surveying, dated 1/21/22, subject to the following conditions:

1. Prior to the issuance of a building permit for a new dwelling, the applicant shall electronically submit 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 for a new dwelling, 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 for a dwelling on the new lot, an ANR plan must be submitted and endorsed by the Planning Board.
4. Prior to the issuance of a building permit for a dwelling on the new lot, pedestrian access to the lot with the existing dwelling at 63 Payson Road shall be shown on a plan, subject to approval by the Assistant Director for Regulatory Planning.
5. Prior to the issuance of a building permit for a dwelling on the new lot, an easement must be granted to the lot with the existing house at 63 Payson Road for two parking spaces and pedestrian access to the lot at 63 Payson Road.
6. Prior to the issuance of a building permit for a new dwelling, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan displaying the approval stamp of the Assistant Director for Regulatory Planning; b) an easement granting the existing dwelling rights to two parking spaces and pedestrian access; c) a Planning Board endorsed ANR plan; and d) 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 Schneider then called upon Mr. Campbell to deliver the findings of the Building Department. Mr. Campbell stated that the Building Department has no objections to the requested relief. He 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 and Zoning By-Laws.



In deliberation, Chair Schneider stated that approving the relief would require the imposition of an additional condition to address the concerns of Deputy Fire Chief Cantor about the planned fence or landscaping inhibiting fire department access.

Board Member Wishinsky then stated that he was pleased to see the Petitioners' plans to increase the supply of non-luxury housing and to keep their son's family nearby. He added that, in his view, **Section 5.43** was sufficient to waive the setback and grade requirements for the proposed parking area. Board Member Wishinsky continued that waiving the slope requirement may pose an adverse use to the neighborhood under **Section 9.05**. He concluded, however, that in light of the support of the Petitioners' abutters and the fact that the condition has existed for some decades without issue, he would vote in favor of granting the requested zoning relief.

In response to Board Member Bell's request to clarify the exact relief needed, Chair Schneider stated that four areas of relief were needed. She continued that special permit relief under **Section 5.43** could be granted to waive three of the four requirements: the minimum front- and side-yard setbacks and the maximum grade. Chair Schneider then stated that the fourth area of relief, regarding off-site parking, was available under Section **6.03.1.B**.

Chair Schneider then stated that she agreed with Board Member Wishinsky's conviction that the absence of prior issues caused by the existing parking area's grade indicated that granting relief from the 10% maximum would not have an adverse effect on the neighborhood. She continued that support from the Petitioners' abutters and a lack of public opposition also contributed to her belief that the neighborhood would not be adversely impacted. Chair Schneider concluded that she would vote in favor of granting the relief as requested, subject to both the conditions as read into the record by Ms. Anthony and the following additional condition: "No

landscaping or fencing shall be installed that, in the opinion of the Fire Department, would inhibit or impede Fire Department access.”

The Board then determined, by unanimous vote, that the proposal met the requirements for special permit relief under **Section 5.43** from the twenty feet minimum front-yard setback requirement of **Section 6.04.5.C.2**, from the five feet minimum side-yard setback requirement of **Section 6.04.5.C.1**, and from the 10% maximum slope requirement of **Section 6.04.4.E**. Moreover, the Board voted to grant special permit relief under **Section 6.03.1.B** to waive the on-site parking facilities requirement of **Section 6.03.1.A**. Therefore, the Board voted to allow for front-yard and side-yard setbacks of 12 feet and 3 feet, respectively, for maximum parking grade of 14%, and for facilities for four off-site parking spots. 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:

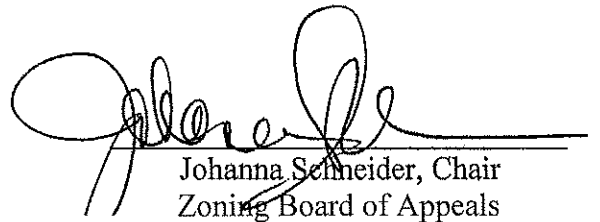
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 revised conditions:

1. Prior to the issuance of a building permit for a new dwelling, the applicant shall electronically submit 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 for a new dwelling, 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. No landscaping or fencing shall be installed that, in the opinion of the Fire Department, would inhibit or impede Fire Department access.
4. Prior to the issuance of a building permit for a dwelling on the new lot, an ANR plan must be submitted and endorsed by the Planning Board.
5. Prior to the issuance of a building permit for a dwelling on the new lot, pedestrian access to the lot with the existing dwelling at 63 Payson Road shall be shown on a plan, subject to approval by the Assistant Director for Regulatory Planning.
6. Prior to the issuance of a building permit for a dwelling on the new lot, an easement must be grated to the lot with the existing house at 63 Payson Road for two parking spaces and pedestrian access to the lot at 63 Payson Road.
7. Prior to the issuance of a building permit for a new dwelling, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan displaying the approval stamp of the Assistant Director for Regulatory Planning; b) an easement granting the existing dwelling rights to two parking spaces and pedestrian access; c) a Planning Board endorsed ANR plan; and d) 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



Johanna Schneider, Chair  
Zoning Board of Appeals

Filing Date: 8/3/22

A True Copy  
ATTEST:



Benjamin Kaufman  
Clerk, Board of Appeals