



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Johanna Schneider
Lark Palermo

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

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-000088
996 COMMONWEALTH AVENUE

Petitioner Brookline Realty LLC applied to the Building Commissioner for permission to construct an addition and alter the layout of site circulation and landscaping. 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 June 21, 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 June 7, 2022, & June 14, 2022, in the Boston Globe, a newspaper in general circulation in the Town. A copy of said notice is as follows:

TOWN OF BROOKLINE - Zoning Board of Appeals
NOTICE OF HEARING

The Brookline Zoning Board of Appeals will hold a public hearing on

Date/Time: Thursday, July 21, 2022

Location: Virtual Hearing OR Hybrid Hearing (TBA)

Virtual Registration Link: <https://bit.ly/3bZN0t3>

Physical Location (if Hybrid): Room 103 (1st floor) of Brookline Town Hall

Petitioner: Brookline Realty LLC

Address: 996 Commonwealth Avenuenue

Subject: Construct addition and alter layout of site circulation and landscaping

Nature of Action/Relief:

§5.09.2.A - DESIGN REVIEW

§8.02.2 - ALTERATION AND EXTENSION

ANY OTHER RELIEF THE BOARD MAY FIND NECESSARY

Plans and submissions may be viewed online at

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

Interested persons may provide comments at the public hearing or by submitting written comments by email to manthony@brooklinema.gov.

Assistive Listening Devices are available upon request:

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

Publish: 7/7/2022 & 7/14/2022

On June 21, 2022, the Zoning Board of Appeals held a public hearing. 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, Nicholas Zozula, McDermott Quilty & Miller LLP, 28 State St #802, Boston, Massachusetts 02109. Also in attendance was engineer Scott Rogers, J.K. Holmgren Engineering, 1024 Pearl St, Brockton, MA 02301, and Joshua Maxwell, Regional Operations Manager at Enterprise Rent-A-Car.

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 Zozula waived a reading of the published notice.

Attorney Zozula, in reliance on a digital presentation, presented the case for the Petitioner. He displayed the location of the site in the context of the neighborhood using a map and stated that the site is about 13,625 sq. ft., located in a general business district, and rectangular in shape. He then displayed a street view of the front of the property and gave background information on the proposal, stating that Enterprise Rent-A-Car has occupied the space since 1994. He added that the only building currently occupying the lot is a single-story 900 sq. ft. building and the lot currently has twenty-one parking spaces. He then displayed images of the street view from the side facing Crowninshield Road and from the rear.

Attorney Zozula then stated that the Petitioners are proposing to construct a 630 sq. ft. addition in the rear of the lot. He continued, stating that the dimensions are 21 ft. by 30 ft. and the addition will be tucked behind the existing building on the lot. He explained that the addition will be used for hand-washing vehicles, elaborating that there will be no mechanical system washing, it will not be available for use by the public, and only Enterprise employees will do the washing. He continued that the rear addition will include doors on either side for easy entry and exit. He stated that currently the vehicles are driven to another location in Brighton for cleaning, so the proposal would reduce traffic coming in and out of the site.

Attorney Zozula went on to describe the requested relief, stating that the petitioner is seeking relief from Section 5.09.2A – Design Review and Section 8.02.2 – Alteration and Extension. He added that this is the only relief the petitioner is seeking, adding that they are not asking for a variance, they are under the allotted floor area ratio and setbacks. He continued that the design review is cited only because the site is located on Commonwealth Avenue.

Scott Rogers then presented the site plans. Using a digital presentation, Mr. Rogers explained that the proposed addition is a bucket-wash area in the back of the already existing

building that matches the line of the existing building. He continued that the proposed changes in parking will allow almost 300 sq. ft. of increased green-space on the lot. He added that the proposed new parking plan will allow twenty-three parking spaces, where there was previously twenty-one. He stated that the grade will remain the same on the site, the existing storm drains will remain intact, and the storm-water peak run-off rates will decrease due to plans to decreasing the impervious foundation on-site, which is considered redevelopment under the Massachusetts Storm Water guidelines. He further explained the changes in utilities, noting that the water system will remain as is, and the overhead, data, and electric lines will need to be relocated, but that otherwise there will not be any major changes. He added that the existing sewer line will be improved, the inside of the building will have a floor drain, and an interior oil water separator that is connected to the floor drain will be used.

Mr. Rogers went on to describe the landscaping plans. He stated that the trees in the front yard facing Commonwealth Avenue will remain intact. He continued that new landscaping islands will be added with new shrubs. Mr. Rogers stated that he believes the site currently is a nice site that is well-maintained, but with the improvements they plan on making, the site will be made nicer with more green-space.

Attorney Zozula then displayed the site elevations, followed by the floor plan of the proposed addition. He stated that all the systems seen on the proposed floor plan will be electric. He continued that the circulation of the lot will allow cars to drive in and out of the addition using the doors on either side of the building. He stated that the addition will be tucked behind the existing building and will, therefore, be mostly unnoticed from Commonwealth Avenue. He added that they worked with the Planning Board to agree on conditions that they believe will make for

an improved site and a better experience for the site's neighbors, including trees facing Crowninshield Road, a lighting plan, and other features that will decrease the impact of the project.

Chair Schneider wanted to confirm that no setback relief is required for this proposal. Attorney Zozula responded by stating this to be true, elaborating that the site is fairly large, but the footprint of the addition is only 21 ft. by 30 ft. Chair Schneider then asked what the hours of operation for the bucket-wash portion of the site are. Attorney Zozula responded that the hours are from 8 a.m. until 5 p.m. on weekdays and from 9 a.m. until 12 p.m. on the weekends. Josh Maxwell, Regional Operations Manager at Enterprise Rent-A-Car, confirmed that this is correct.

Board Member Neal Wishinsky asked if the operation required any licensing so that if neighbors have any concerns about the operation they have a place in town to report to. Attorney Zozula responded that there is no licensing required that he is aware of. Chair Schneider stated that she does not believe there is any required licensing that she is aware of.

Chair Schneider then called for public comments.

Adam Scotto, 26 Crowninshield Road, Brookline, MA 02446, spoke in opposition of the proposal. He stated that there has been no consideration for the neighbors occupying the new 21 Crowninshield townhouses that directly abut this proposal. He noted that the neighborhood map found in the Planning Board Package and discussed at the July 7, 2021 Planning Board meeting shows an empty lot abutting the site. He stated that the pictures showing the street view of the site used at the Planning Board hearing and today's hearing still do not show the townhouses or their proximity to the proposed project at all and he has provided new pictures of the site demonstrating the proximity of the townhouses to the site. He also stated that the photo used to demonstrate the rear view of the building was taken before the construction of the townhouses and misrepresents the size of the available space on the applicant's lot. He continued that he met with one of the new

residents of the 21 Crowninshield townhomes, Steven Okajima, who had no idea this hearing or the proposed project were taking place. Mr. Scotto noted that Mr. Okajima informed him that the townhomes are required to have always-on air intake system, and this air system will likely draw all the fumes released during car-washing into Mr. Okajima's new home, in addition to the new noise from the proposed facility. Mr. Scotto stated that he believes the impact on the new neighbors should be fully considered before this proposal is approved.

Mr. Scotto continued, stating that at the July 7, 2022 Planning Board meeting, the Board discussed that the Enterprise employees may wish to use the washing facilities with the doors open. He continued that, to his understanding, the conditions originally read that the doors will be closed during the washing of cars in order to minimize noise to the surrounding neighborhood. He added that the language was changed to read the doors will remain closed "to the extent feasible". He stated that this change makes the condition totally unenforceable, as he believes employees may leave doors open at all times to eliminate steps in their washing process and this will lead to a rabbit hole of feasibility arguments if there are neighborhood complaints. He continued that this change will severely impact the neighborhood due to the noise coming from pressure washers, air compressor noise, and other noise associated with the washing process. He opined that the washing process will lead to caustic and likely harmful chemical release to the residents of the neighborhood, most notably the 21 Crowninshield townhomes. He stated that, if this facility is allowed, he believes the closed-door requirement should be reinstated and that a requirement of chemical-filtering of the vent air should be included. He continued that he believes that Enterprise Rent-A-Car may take to using this facility to clean cars from multiple other locations, as they have been doing at their Brighton location, increasing the traffic at this location. He continued that in the original Enterprise response to their denial, they stated they would engineer a facility that could

be safely and completely operated with the doors closed. He added that Enterprise has stated they can do this and this project only harms Brookline and the surrounding neighborhood, including the air and groundwater. He concluded by stating that at the very least this operation should require noise standards and proper air filtration.

Chair Schneider asked if there were any other members of the public present who wished to speak on this proposal.

Steven Okajima, 21 Crowninshield Unit 9, Brookline, MA 02446, introduced himself as a resident of one of the abutting townhouses. He stated that he and other residents are concerned, mainly because the always on ventilation requirements of his home could cause any debris or air from the car wash to enter the air system. He explained that his family would be constantly exposed to any chemicals or debris from the car wash while at home, and worries about how this will have long-term health impacts on his family and any future children. He continued that he is concerned about the handling and disposal of chemicals used at the cleaning facility and, since the only thing separating the townhouses and the car wash is an above-ground fence, he is concerned with potential leakage and property damage. He then stated that he was only made aware of this project at around 4:00 p.m. the prior day. He continued that he has concerns about the chemical compressor and chemical storage that will be right next to his home, fearing any accidents or leaks that might result. He added that he also has concerns about increased waste from the compressor and pressure washer, and his biggest concern is safety hazards, adding that if it is not safe for the employees to close the doors when washing the vehicles, he questions if it will be safe for adjacent homes to be exposed to these chemicals and debris. He stated that the townhouse units are very close to the proposed project and that the residents of the townhomes are already able to smell smoke when people are taking a smoke break, so any fumes released from the car wash will be

inhaled by them as well. He continued by stating that he had spoken to another neighbor who is also extremely upset by this news that had also just heard about it. He stated that he spoke to an agent of the 21 Crowninshield townhouses, who said they received no notification about this project.

Chair Schneider asked Mr. Okajima a follow-up question about what the distance between the rear edge of his building and the fence that is on the property line. Mr. Okajima responded that he does not have an exact measurement, but it is definitely under ten feet.

Chair Schneider asked the applicant's team to clarify if there will be pressure washing at the site. Attorney Zozula responded that there will be pressure washing will be done by hand, adding that all the equipment will be electric, so there will be no gas released. Mr. Maxwell explained that "bucket wash" means that no automated equipment is used. He explained that they use pressure washing to minimize their water usage, and all the pressure washing equipment is electric. He added that after the pressure washing is completed, the employees then hand wash the cars with environmentally friendly soap and there is no toxins of any kind.

Chair Schneider then asked the applicant's team to provide the Board information on their plans for chemical storage and disposal, specifically asking what chemicals they will be storing and disposing of and their plan for managing them. Mr. Maxwell responded, stating that the only extra chemical that will be brought on site is soap for the washing of the vehicles. He continued, stating that they do not use any aerosol products, all products are kept on site in a storage area that is secured, and there would be no additional hazardous materials, or things of that nature, brought on site. Chair Schneider then asked if the product storage will be located behind the new car wash addition. Mr. Maxwell responded no, products will be stored inside of the wash for employee use only. Chair Schneider then asked what the plans are for a compressor unit, which was previously

mentioned by a member of the public. Mr. Maxwell responded that the compressor is already on site and in use currently, but will be moved inside of the proposed addition. He continued that the compressor is used to fill tires and is a low-decibel thirty-gallon pancake unit. He again stated that it is already on site and in use, but will now be moved inside of the proposed wash-bay.

Chair Schneider then stated that it seems was at one point a proposed condition that the doors of the washing facility would need to be closed during washing that was then changed to the doors being allowed to remain open. She asked if there would be any objection to a condition that would require that the doors be closed during car washing. Attorney Zozula responded that the condition as read into the record at the July 7, 2022 Planning Board hearing required the doors to be closed to the maximum extent feasible. He continued that the Planning Board requested the condition to include the phrase "to the maximum extent feasible" in its recommendation but the phrase was omitted in error in the initial report to the Board of Appeals and was later corrected Planning Department staff. Attorney Zozula explained that the reasoning for the inclusion of the phrase "to the maximum extent feasible" was to have the flexibility to open the doors on days of extreme heat. He added that the doors are not facing the properties of anyone who spoke in opposition at this hearing and the distance from the edge of the addition to the property line is twenty-four feet. Chair Schneider then asked if they knew how tall the fence on the property line is. Attorney Zozula responded that he did not know, but it is most likely six feet high due to standard fence regulations.

Board Member Wishinsky stated that an abutter submitted a picture showing what appears to be a vacuum cleaner at the rear of the existing building and asked the applicant's team if the vacuum cleaner will be brought inside and how noisy it is. Mr. Maxwell responded that they use canister vacuums to prepare their vehicles. He continued that there are canister vacuums on site

currently in use and the intent of this project is to contain these activities both in term of noise and aesthetics, so that abutters so not have so see employees cleaning the vehicles. He explained that the canister vacuums will be brought inside and all preparation activities will take place inside of the proposed wash bay, adding that the canister vacuums are low decibel and are about as loud as a residential vacuum cleaner.

Chair Schneider asked if there were any public comments the applicant's team wanted to respond to. Attorney Zozula stated that what is being proposed is a very simple operation and there would be no aerosols or harmful sprays. He also addressed the concern that the proposal could increase traffic in and out of the site, explaining that this is the only Enterprise in the area that does not have a wash bay, so it is unlikely that cars from other locations will be washed here. He added that they are trying to be respectful of their neighbors during this process while maximizing their use of the site that they have occupied for almost thirty years.

Chair Schneider then called upon Planner and Zoning Coordinator, Madison Anthony, to present the Planning Board report. Ms. Anthony read the report into the record.

FINDINGS

§5.09.2.A – DESIGN REVIEW

Any exterior alteration made to a property within 100 feet of Commonwealth Avenue, one of the major thoroughfare in Town, requires a special permit under design review. Please see the submitted design review statement by the applicant.

§8.02.2 – ALTERATION AND EXTENSION

A special permit is required for an alteration or extension of a non-conforming structure or use.

PLANNING STAFF COMMENTS

The Planning staff is supportive of the proposal. The rear addition should have minimal impact: it will be only one story and only slightly visible from Commonwealth Avenue; it can be closed off when rental cars are being cleaned to minimize noise; an extra parking space will be created through the reconfiguration of the parking lot lay-out, and the appearance of the site will be enhanced with two new landscape areas where the existing parking lot abuts Commonwealth Avenue.

PLANNING BOARD RECOMMENDATION

The Planning Board is supportive of the proposal. The Board heard concerns from neighbors about lighting and noise, and likewise harbored their own concerns about landscaping and lighting. Issues of chemical runoff were also discussed but the applicant adequately assured the Board that proper precautions are already in place on the site and non-intrusive machine tools are in use. To alleviate concerns with light pollution and landscaping, the Board recommends that the applicant plant new street trees and that new lighting is installed in a manner that eliminates glare for surrounding properties.

If the Planning Board recommends approval of the site and landscaping plan by JK Holmgren Engineers, dated 3/22/22, and architectural plans by Cornerstone Architects, dated 3/01/22, the Planning Department recommends 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 subject to approval by the Assistant Director for Regulatory Planning. The landscape plan shall include the addition of three street trees along Crowninshield Road subject to approval by the Town's Tree Warden.**
- 3. Prior to the issuance of a Certificate of Occupancy, the applicant shall submit to the Assistant Director for Regulatory Planning for review and approval a lighting plan and photometric plan that demonstrates that no light shall spill off the site and that allows dimming of lighting by rheostat during non-business hours.**
- 4. The addition will be closed to the maximum extent feasible during the washing of cars to minimize noise to the surrounding neighborhood.**
- 5. 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; 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 Schneider then called upon Mr. Paul 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 deliberation, Board Member Wishinsky stated the relief requested is essentially design review and the proposed addition is not especially visible from Commonwealth Avenue, but is

visible to the neighbors on Crowninshield Road. He continued, stating that he wishes more was done to make the rear more attractive, but it is a utilitarian site with a utilitarian use and he will defer to the Planning Board. He added that the proposal involves moving some activity that was previously outdoors to within the new addition, such as vacuuming. He added that it does not seem like the site will be a high volume traffic area. He continued that he understands the abutter's concerns, but would be in favor of granting the requested relief.

Board Member Bell stated that he feels the design is reasonable and meets the standards for relief. He continued, stating that it seems the cited design review has more to do with the fact that the site is on Commonwealth Avenue, than it being a commercial use. He added, however, that it is a proposal that requires an extension of a nonconforming use, so the impact on the residents facing the rear should be considered. He continued that with zoning there are lines where commercial uses abut residential uses, and the applicant has made very reasonable efforts to make the use here appropriate. He added that it seems the addition will actually improve the site and make it less noisy. He concluded that the Planning Board's conditions are all reasonable, and he would vote to approve the project, subject to the conditions laid out in the Planning Board Report.

Chair Schneider stated that she agrees with everything her fellow Board Members had already said. She added that, even with the addition, there is still twenty-four feet from the edge of the addition to the property line and a fence that is at least six feet tall between the site and the neighboring properties. She continued that she likes how the doors of the addition are not facing the closest abutters, but instead other commercial properties or the street and emphasized Mr. Bell's point that there are things that were previously outside that are now being moved inside, making it a less impactful use for the neighborhood. She added that, as Attorney Zozula stated, it seems this proposal will actually decrease the amount of vehicular trips in and out of this site,

which will be beneficial for the neighborhood. She stated she would be in favor of granting the requested relief, subject to the conditions as read into the record.

The Board then determined, by unanimous vote, that the proposal met the requirements for a finding under M.G.L. Ch. 40A, Section 6 and, therefore, to allow alteration or extension of a pre-existing nonconforming use. 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:

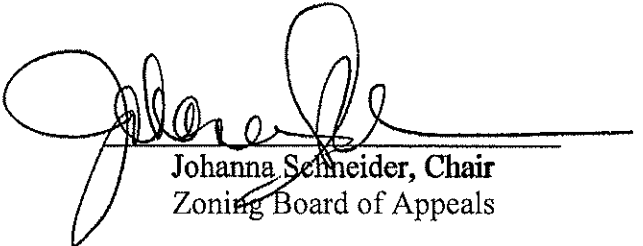
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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. 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 subject to approval by the Assistant Director for Regulatory Planning. The landscape plan shall include the addition of three street trees along Crowninshield Road subject to approval by the Town's Tree Warden.

3. Prior to the issuance of a Certificate of Occupancy, the applicant shall submit to the Assistant Director for Regulatory Planning for review and approval a lighting plan and photometric plan that demonstrates that no light shall spill off the site and that allows dimming of lighting by rheostat during non-business hours.
4. The addition will be closed to the maximum extent feasible during the washing of cars to minimize noise to the surrounding neighborhood.
5. 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; 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



Johanna Schneider, Chair
Zoning Board of Appeals

Filing Date: 8/22/22

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals