



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Johanna Schneider
Lark Jurev Palermo

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TOWN CLERK'S OFFICE
SEP 15 2022 10:41 AM

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-000043
28 RUSSELL STREET

Petitioner Eric Schmider applied to the Building Commissioner for permission to construct a detached garage in the rear yard. 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 September 1, 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 August 18, 2022, & August 25, 2022, in the Boston Globe, a newspaper in general circulation in Brookline. 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, September 15, 2022

Location: Virtual Hearing

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

Petitioner: 28 Russell Bulldog LLC

Address: 28 Russell Street

Subject: Construct garage at rear of property

Nature of Action/Relief:

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.63 - ACCESSORY BUILDINGS OR STRUCTURES IN SIDE YARDS

§5.72 - ACCESSORY BUILDINGS OR STRUCTURES IN REAR YARD

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: 9/1/2022 & 9/8/2022

On September 15, 2022, the Zoning Board of Appeals held a virtual public hearing.¹ Present at the hearing were Chair Lark Palermo and Board Members Johanna Schneider and Randolph Meiklejohn. The case was presented by the attorney for the Petitioner, Jennifer Dopazo Gilbert, RLAW P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance was the project architect, Lee Silverstone, 1200 Washington Street, Boston, Massachusetts.

Zoning Board of Appeals Chair Palermo called the virtual hearing to order at 7:00 pm. Chair Palermo 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 Dopazo Gilbert waived a reading of the published notice.

Attorney Dopazo Gilbert presented the case for the Petitioner stating that 28 Russell Street is a two-family dwelling located in a T-5 zoning district. She continued that the proposal to construct a 16-foot x 20-foot detached garage in the rear yard requires relief for the rear and side yard setbacks because the Zoning By-Law requires a side yard setback of 6-feet and the proposed

¹ On September 1, 2022, at 7:00pm, by a unanimous vote, the Board of Appeals continued the hearing to September 15, 2022 at 7:00pm without testimony.

side yard setback is approximately 1-foot; and the Zoning By-Law requires a rear yard setback of 6-feet and a rear yard setback of 2.4-feet is proposed. She commented that special permit relief may be granted pursuant to Section 5.43 of the Zoning By-Law, if an appropriate counterbalancing amenity is provided. Attorney Dopazo Gilbert opined that the proposed landscaping and permeable pavers satisfies the counterbalancing amenity requirement.

She continued that the Planning Board provided its unanimous support for the proposal without any known opposition. In addition, Attorney Dopazo Gilbert added, that according to the MACRIS database, there was previously a garage in approximately the same location and noted that many other properties in the neighborhood had similar sized garages in similar locations in relation to the principal structure.

Upon inquiry from Board Member Meiklejohn, Ms. Silverstone presented a site plan showing the location of the proposed garage with a side yard setback of approximately 1-foot and rear yard setback of 2.3-feet to 2.9-feet. Ms. Silverstone reviewed the site, the location of the proposed garage, and clarified the footprint of an existing retaining wall.

Upon inquiry from Board Member Schneider, Attorney Dopazo Gilbert stated that the Petitioner sent letters to the immediate abutters and there has been no opposition expressed throughout the process.

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

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

FINDINGS

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.63 - ACCESSORY BUILDINGS OR STRUCTURES IN SIDE YARDS

§5.72 - ACCESSORY BUILDINGS OR STRUCTURES IN REAR YARDS

Zoning: T-6	Requirements	Proposed Conditions	Relief Required
Accessory Structure Side Yard	6'	1'	Special Permit*
Accessory Structure Rear Yard	6'	2.4'	Special Permit*

* **Section 5.43, Exceptions to Yard and Setback Regulations:** 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. New fencing may serve as a counterbalancing amenity.

PLANNING DEPARTMENT COMMENTS

Ms. Anthony stated that the Planning Department is supportive of this proposal and continued that the proposed garage will provide an extra parking space in a covered rear garage. She noted that the by-law does permit setback relief via special permit and the neighboring property has a similar garage. Therefore, she stated, this proposal appears not to be detrimental to the neighborhood.

PLANNING BOARD COMMENTS

Ms. Anthony stated that the Planning Board supports the proposed garage in the rear corner of the lot. The applicant showed a photo showing that there had previously been a garage there. Additionally, garages located in the rear corner of yards appears prevalent in the neighborhood. The Planning Board found that the use of permeable pavers for the driveway and the proposed zero scape landscaping will serve as counterbalancing amenities to waive the yard setbacks.

Therefore, Ms. Anthony stated, the Planning Board voted to recommend approval of the site plan by C & G Survey Company, PLS dated December 8, 2021, and architectural plans by

SB Architects dated May 23, 2022, 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 or engineer and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director of 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 the use of permeable pavers for the driveway and the new xeriscape plant material, subject to the review and approval by the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval 1) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director of Regulatory Planning; and 2) 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 Palermo then called upon Paul Campbell, Deputy Building Commissioner, to deliver the findings of the Building Department. Mr. Campbell stated that the Building Department had no objections to the requested relief 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.

Attorney Dopazo Gilbert reviewed the Special Permit standards enumerated in **Section 9.05** noting the following: 1) Specific site is an appropriate location for such use: The property is in a T-5 zoning district (attached two-family dwelling), in which an accessory structure for parking is an allowed use. Neighbors across the street (25 and 31 Russell) already have detached accessory structures in identical spots on each of their properties; 2) Use will not adversely affect the neighborhood: The project calls for modifications that are located at the rear of the home, which would mean the rear-abutters would be most affected. To date, there is no known opposition. In

addition, sufficient counterbalancing amenities are proposed; 3) No nuisance or serious hazard to vehicles or pedestrians: There will be no change to the circulation of vehicles or pedestrians at the site ; 4) Adequate and appropriate facilities will be provided for the proper operation and proposed use; 5) Development will not have any effect on the supply on housing available for low and moderate income people.

In deliberation, Board Member Schneider stated that the proposal was modest and fit within neighborhood and the individual property. She added that it appeared to be in keeping with existing development pattern of the neighborhood and the proposed counterbalancing amenity was sufficient to meet the standards as proscribed in Section 5.43 of the Zoning By-Law. Board Member Meiklejohn concurred and noted that the garage is consistent with the strong development pattern in the neighborhood and continued that the proposed garage reenforces that existing pattern. Chair Palermo concurred with Board Members Schneider and Meiklejohn and concluded that the standards were satisfactorily met under Sections 5.43 and 9.05 of the Zoning By-Law.

The Board then determined, by unanimous vote, that the proposal met the requirements for a special permit granting relief from application of the provisions of Sections 5.63 and 5.72 pursuant to Section 5.43 of the Zoning By-Law. 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:

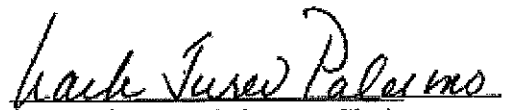
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 or engineer and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director of 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 the use of permeable pavers for the driveway and the new xeriscape plant material, subject to the review and approval by the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval 1) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director of Regulatory Planning; and 2) 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



Lark Jurev Palermo, Chair
Zoning Board of Appeals

Filing Date: 10/25/22

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals