



Jesse Geller, Chair
Johanna Schneider
Lark Jurev Palermo

Town of Brookline Massachusetts

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

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-000053
105 STEDMAN STREET

Petitioner, 105 Stedman Street LLC, applied to the Building Commissioner for permission to widen a proposed driveway and shift it to the right at 105 Steadman Street where a new single-family home with a single car garage is under construction. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed September 15, 2022 at 7:00 p.m. as the date and time for a virtual hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its attorney 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 9/1/2022 and 9/8/2022 in the Boston Globe, a newspaper published in Brookline. A copy of said notice is as follows:

Notice of Hearing

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: 105 Stedman Street LLC

Address: 105 Stedman Street

Subject: Shift Driveway Slightly to Right

Nature of Action/Relief:

§5.13 - LOT WIDTH

§5.20 - FLOOR AREA RATIO

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE YARD REQUIREMENTS

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

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

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

The public hearing was held on September 15, 2022 and continued to October 13, 2022.

Present on both dates were Chair Lark Palermo and Board Members Jesse Geller and Randolph Meiklejohn. The case was presented by the attorney for the Petitioner, Jeffrey P. Allen, Lawson & Weitzen LLP, 88 Black Falcon Ave #345, Boston, MA 02210.

Chair Palermo called the virtual hearing to order at 7:00 pm. She 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 the reading of the public notice and presented the case for the Petitioner. He explained that the Board of Appeals had previously approved relief under M.G.L. Section 6 in ZBA Case #2020-0029 to allow for demolition of a single-family home on the property and construction of a new single-family home with a one-car garage.

The original house had no garage and had two side-by-side parking spaces in the driveway. The Petitioner has procured a buyer for the new home who objects to tandem parking and therefore the Petitioner seeks to widen the driveway from 12.5 feet to 16 feet and to allow for a 3.5-foot buffer with the neighbor located to the left of the new house. The Petitioner proposes installation of pavers in the driveway instead of asphalt.

Members of the Board expressed concern that the new driveway design would create a safety hazard because in addition to a car parked in the garage, two more cars could park side-by-side in the driveway. This would result in two cars parking very close to the curb and the sidewalk and in addition, there could potentially be three cars parking at the property and backing out into the street.

Attorney Allen requested a continuance of the hearing to give the Petitioner the opportunity to present a revised driveway design. The Board agreed to continue the case to October 13, 2022.

On the continued hearing date Chair Palermo summarized the background of the case, explaining that the Petitioner was seeking to widen the driveway to 16 feet and move it to the right to accommodate a 3.5 foot buffer strip. After the Board had expressed concerns about creating a potential safety hazard in the neighborhood, the Petitioner requested a continuance of the case. The case was continued to permit the Petitioner to develop an alternative design for the driveway that would not create a public safety hazard.

At the continued hearing Attorney Allen showed the Board a photograph of the original home with the original driveway. He explained that the original driveway is still there, and it is 16 feet wide. He added that, as shown in the photograph, there is no setback

between the driveway and the neighbor's property. He stated that the driveway has not been changed, therefore it could remain. Attorney Allen showed another photograph that depicted the existing driveway and the neighbor's property. Attorney Allen pointed out that currently there is no separation between the driveways and explained that what is shown in the photograph is the existing condition. Attorney Allen explained that when the Petitioner came before the Board previously, the Petitioner was asking to move the driveway three feet to the right in order to create a buffer with the neighbor. Attorney Allen stated that the existing driveway is a pre-existing non-conforming use that falls under *Deadrick* and the other cases. Attorney Allen stated that the existing driveway has not been abandoned, so it could be utilized by the Petitioner; however, the Petitioner would rather not utilize the existing driveway. Instead, Petitioner has developed two alternative designs for a new driveway for consideration by the Board.

These two alternative designs were submitted to the Board in advance of the hearing in the form of two plans, one labeled "Option 1" and the other labeled "Option 2." In "Option 1," the Petitioner reduced the buffer with the neighbor to the left from 3.5 feet to 2 feet 6 inches and widened the driveway to incorporate the eleven-inch difference. This would allow a car to park closer to the house and away from the sidewalk.

Describing the plan depicting "Option 2," Attorney Allen explained that it retained the 3.5 width of the buffer strip which would be landscaped and that the width of the driveway would be increased to 18 feet. He further explained that this was accomplished by reconfiguring the vestibule at the front of the house, creating more room to park a car closer to the house and farther away from the sidewalk.

The Board viewed the plan labeled "Option 2." Attorney Allen pointed out the details of the reconfiguration and answered questions from the Board regarding, among other things, the proposed landscaping in the 3.5 foot buffer between the driveway for the property and the neighbor. Board Member Meiklejohn observed that the plan labeled "Option 2" allowed for a car to be parked farther away from the sidewalk, which was positive from a public safety perspective. The Petitioner stated that a car would be able to pull up and be approximately 3 feet away from the sidewalk in the "Option 2" plan. Board Member Geller observed that in "Option 2", a car could be pulled in closer to the house and farther away from the sidewalk, which would improve vehicle and pedestrian safety. Board Member Meiklejohn thanked the Petitioner for the design work that improved public safety.

Attorney Allen stated that conditions in a **Section 6** decision must be voluntary and noted that to further address the Board's concerns, the Petitioner would agree to a condition that prohibits rental of a third parking space in the driveway.

Chair Palermo asked if there were any members of the public wishing to speak, and there were none.

Board Member Meiklejohn asked which one of the options the Petitioner was seeking to pursue and Attorney Allen responded that the reason the Petitioner went to the expense and time to create the options was because she wanted to give the Board the proposal that gave it the greatest comfort. Attorney Allen stated that the Petitioner believes both "Option 1" and "Option 2" are good results. The Petitioner stated that the buyers would prefer "Option 1" because it allows for more greenery and less pavement.

Chair Palermo stated that she would not request a reading of the Planning Board report because it discussed a prior proposal rather than the two options currently before the Board. Attorney Allen commented that the Planning Board approved of the first proposal so it was his opinion that they would be strongly in favor of the proposals being presented tonight. Chair Palermo invited Board deliberation.

Board Member Geller stated that the sole issue before the Board is whether the "Option 1" and "Option 2" proposals for a new driveway are substantially more detrimental to the neighborhood under M.G.L. c. 40A, § 6. Board Member Geller said "Option 2" allows for approximately three feet between the sidewalk and the rear end of a car parked in the driveway. Therefore, based on the plan labeled "Option 2," he would be in favor of a finding under M.G.L. c. 40A, § 6 that it is not substantially more detrimental to the neighborhood. He believes that it also meets the requirements of By-Law Section 9.05 and in particular, that it will not create a serious hazard to vehicles or pedestrians. Board Member Geller expressed appreciation to the Petitioner for taking the time to address the Board's concerns.

Chair Palermo invited Board Member Meikeljohn to comment on the proposals and he stated that he agreed with Mr. Geller's comments. He also thanked the Petitioner for redesigning the driveway to achieve improvements in public safety. Mr. Meikeljohn stated that he supports the grant of relief for the reasons Mr. Geller has given.

Chair Palermo stated she agreed with both Mr. Geller and Mr. Meikeljohn, making the decision unanimous. Chair Palermo stated that this design satisfies the standards set forth in M.G.L. c. 40A, § 6 because it is not substantially more detrimental to the

neighborhood. She stated that the Board and Petitioner have arrived at a design that will improve public safety in "Option 2." Board Member Geller added that as suggested by the Petitioner, he would like to include a condition that prohibits renting parking spaces on the property and the other Board members agreed.

Attorney Allen asked if the usual condition of:

"Prior to the issuance of a building permit, the applicant shall a) electronically submit to the Building Commissioner for review and approval the site plan 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."

could be amended by requiring the activities to take place prior to the issuance of a certificate of occupancy instead of a building permit, as otherwise there would be a significant construction delay in completing the driveway. Board Member Geller asked about the construction activities that would be impacted by the delay and Attorney Allen summarized them. Deputy Building Commissioner Campbell clarified that the Petitioner would be requesting a separate building permit for the driveway. He said that the Building Department is comfortable with the change in the condition requested by Attorney Allen. Board Members Geller and Meikeljohn then indicated that they were agreeable with the change in condition requested by Attorney Allen.

The Board found that the requirements for special permit were met under **M.G.L. c. 40A, § 6** and also pursuant to **Section 9.05** of the Zoning By-Law, specifically:

- 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. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

The Board then, by unanimous vote, approved the issuance of a special permit for the construction of the driveway presented as "Option 2", subject to the following conditions:

- 1. Prior to the issuance of a building permit, 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, the applicant shall electronically submit a landscape plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning.
- 3. Prior to the issuance of a certificate of occupancy, the applicant shall a) electronically submit to the Building Commissioner for review and approval the site plan 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.
- 4. Rental of a parking space for a third car to park in the driveway, on either a short term and long-term basis, shall be prohibited.


Unanimous Decision of
The Board of Appeals

Filing Date: 11/18/2022


Lark Jurev Palermo, Chair

A True Copy

ATTEST:


Ben Kaufman
Clerk, Board of Appeals