



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. 2022-0059
191 LONGWOOD AVENUE

Petitioners, Donald Morris and Suzanne Pender applied to the Building Commissioner for permission to expand an existing driveway and create a new parking space. 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 November 10, 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 October 27, 2022, & November 3, 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, November 10, 2022

Location: Virtual Hearing

Virtual Registration Link: <https://bit.ly/3TTK6X8>

Petitioner: Donald J. Morris & Suzanne G. Pender

Address: 191 Longwood Ave

Subject: Expand existing driveway

Nature of Action/Relief:

§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

Plans and submissions may be viewed online at

<https://www.brooklinema.gov/DocumentCenter/Index/3262>

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: 10/27/2022 & 11/03/2022

On November 10, 2022, the Zoning Board of Appeals held a virtual public hearing. Present at the hearing were Chair Jesse Geller and Board Members Paul Bell and Wadner Oge. The case was presented by the attorney for the Petitioner, Jennifer Dopazo Gilbert., RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance was Petitioner, Dr. Donald Morris.

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 Dopazo Gilbert waived a reading of the published notice.

Attorney Dopazo Gilbert presented the case for the Petitioners. Attorney Dopazo Gilbert stated that the two-family home located at 191 Longwood Avenue is in an SC-7 Zoning District and the Petitioners are proposing to expand the existing driveway by approximately 200 square feet, towards the side property line. She continued that the expansion would allow for two existing cars to be able to park side by side by moving the existing tandem space and creating a new space at the side lot line and would ameliorate an undesirable tandem parking condition.

Attorney Dopazo Gilbert then stated that the other condo unit at 193 Longwood Avenue is in support and provided a letter to that effect to the Board of Appeals and added that the Planning Board unanimously supported the proposal.

Attorney Dopazo Gilbert continued that the proposed driveway expansion and creation of the parking space requires relief for the side yard setback because the Zoning By-Law requires a 5-foot side yard setback and the proposed side yard setback is 2-feet. She commented that, zoning relief could be granted by special permit either pursuant to Section 6.04.12, or under Section 5.43 of the Zoning By-Law, with expansion of permeable pavers offered as the counterbalancing amenity.

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 driveway is currently used for tandem parking and this small expansion of that use and creation of a new space is appropriate to allow for two cars to be able to park side by side; 2) Use will not adversely affect the neighborhood: The Petitioners reached out to neighbors and there is no known opposition and the most impacted abutter has indicated their support. This expansion will be an improvement to the existing condition and minor trade off of additional driveway area will reduce exhaust from moving cars and noise reduction; 3) No nuisance or serious hazard to vehicles or pedestrians: This expansion will have a positive impact for vehicles and pedestrians due to a reduction in cars backing out to move another car, resulting in an overall safer environment; 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.

Upon inquiry from Chair Geller, Attorney Dopazo Gilbert clarified that the Petitioners as the condominium unit owner of 191 Longwood Avenue also owns the entire right side of the

driveway and the specific area is not condominium common area but is rather a part of the unit. The Board of Appeals discussed the layout of the existing driveway and the goal to save an existing tree and have a safe parking condition. Dr. Morris provided testimony as to having sufficient legal interest within the condominium documents in the impacted portion of the driveway. Upon inquiry from Board Member Oge, Dr. Morris stated that letters were provided to the abutting properties and no one reached out with any concerns or opposition. Dr. Morris also described the mature landscaping that provides screening between the properties and from the street.

Chair Geller then called for public comments in support of or in opposition to the Proposal. No comments were submitted and no one requested to speak.

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

FINDINGS

§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

ZONING: SC-7	Required/ Allowed	Proposed	Relief
Side Yard Setback (left) Of Driveway and Parked Car	5'	2'	Special Permit*

¹ 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.

PLANNING DEPARTMENT COMMENTS

Ms. Anthony stated that the Planning Department is supportive of this proposal and added that the proposed driveway expansion will allow for two cars to park side-by-side at 191 Longwood Ave, replacing the current tandem parking situation. She noted that this will decrease

the amount of car shuffling in and out of the driveway, creating less traffic in and out of the driveway and this proposal appears not to be detrimental to the neighborhood.

PLANNING BOARD COMMENTS

Ms, Anthony stated that the Planning Board voted to recommend approval of the site plan by Snelling Hamel Associates Inc., dated June 1, 2022, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit a final site plan with dimensions and indicating existing and proposed landscaping, 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 or site plan that shows proposed counterbalancing amenities subject to 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 a) 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.

Chair Geller then called upon Deputy Building Commissioner Campbell 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.

In deliberation, Chair Geller stated that expansion of existing permeable pavers would not, in his opinion, satisfy the requirements for a counterbalancing amenity under **Section 5.43** of the Zoning By-Law to offset the violation of the side yard set-back requirement but that the requested relief could be granted by Special Permit under **Section 6.04.12** of the Zoning By-Law and continued that the proposal meets the standards for the relief under **Section 9.05** of the Zoning By-

Law. Mr. Geller noted that the strict language of Section 6.04.12 applies to new parking and it is unclear whether this would or should apply to expanded existing parking. He added however that it appears the expansion and creation of a new space at the side lot line would create a safer parking condition and reduce the backing out of the driveway onto a busy road. Board Member Bell concurred and was supportive of the requested special permit relief. Board Member Oge concurred and supported the grant of the relief under Section 6.04.12.

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 Section 6.04.5.C.2 pursuant to Section 6.04.12 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:

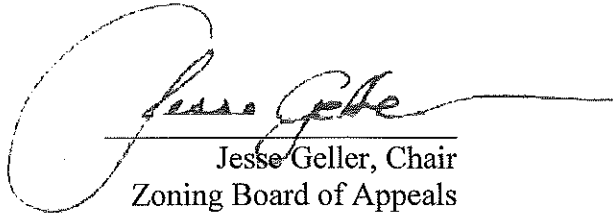
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the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

1. Prior to the issuance of a building permit, the applicant shall electronically submit a final site plan with dimensions and indicating existing and proposed landscaping, 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 to the Building Commissioner for review and approval a) 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.

Unanimous Decision of
The Board of Appeals



Jesse Geller, Chair
Zoning Board of Appeals

Filing Date: 12/8/2022

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals