



Town of Brookline

Massachusetts

BOARD OF APPEALS
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2023-00006
222 WARREN STREET

Petitioner, Warren Cottage Ventures, LLC, applied to the Building Commissioner for permission to construct an addition to an existing single-family dwelling located at 222 Warren Street. The application was denied, and an appeal was taken to this Board.

The Board of Appeals 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 13, 2023, 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 March 30, 2023, and April 6, 2023, in the Herald, a newspaper of 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, April 13, 2022

Location: Virtual Hearing

Virtual Registration Link: <https://bit.ly/31Ok9Nr>

Petitioner: Warren Cottage Ventures LLC

Address: 222 Warren Street

Subject: Construct addition to existing single-family dwelling

Nature of Action/Relief:

§4.07 – TABLE OF USE REGULATIONS, USE #62; §5.30 - MAXIMUM HEIGHT OF BUILDINGS; §5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS; §5.50 - FRONT YARD REQUIREMENTS; §6.04.5.C.1 – DESIGN OF ALL OFF-STREET PARKING FACILITIES; §6.04.5.C.2 – DESIGN OF ALL OFF-STREET PARKING FACILITIES; § 8.02 – ALTERATION OR EXTENSION

Plans and submissions may be viewed online at

<https://www.brooklinema.gov/DocumentCenter/Index/4003>

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: 3/30/2023 & 4/6/2023

On April 13, 2023, the Zoning Board of Appeals held a virtual public hearing. Present at the hearing were the Chair, Jesse Geller and Board Members, Neil Wishinsky 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 were the representative of Petitioner, Jeff Birnbaum, the landscape architect, Troy Sober, Gregory Lombardi Design Inc., 221 Boston Road, North Billerica, Massachusetts, and the project architect, Tony Filardo, Catherine Truman Architects, 29 Warren Street, Cambridge, Massachusetts.

Zoning Board of Appeals Chair Geller called the hearing to order at 7:00 pm and reviewed the standard hearing procedure for virtual hearings and confirmed that all Board Members and staff could visually and auditorily engage in the hearing. Chair Geller, noting that the proposal at 222 Warren Street and a proposal for 25 Cottage Street, Case No. 2023-00005, were related, inquired of Attorney Dopazo Gilbert whether the petitioner like to address the two applications simultaneously. Attorney Dopazo Gilbert responded in the affirmative, adding that she would first

focus on the matter of 222 Warren Street, because it was a relatively straightforward proposal. She then waived a reading of the published notice for both cases.

Attorney Dopazo Gilbert presented the case for the Petitioner stating that the two matters had been under the review of the Preservation Commission for 2 years and five months, with numerous site visits having been performed in that time by the public, members of the Commission, and the Commission's specially hired preservation architect, Steve Riley, of Albany, New York. Attorney Dopazo Gilbert continued that the Conservation Commission had already approved the proposals, adding that the body was excited to see the septic system for 222 Warren Street moved further away from wetlands at the properties' rear. She requested that the Board, in evaluating the present proposals' provision of counterbalancing amenities under Zoning By-Law **Section 5.43**, consider the preservation of the structures and the submitted mitigation package, which had been approved by the Preservation Commission, as well as the extensive landscaping changes.

Attorney Dopazo Gilbert stated that one of the more important items in the mitigation plan consisted of largely preserving both 25 Cottage Street and 222 Warren Street and recording a view shed and landscape restriction. She noted that both properties are located in the National Register District as well as the Greenhill National Register District. She continued that the Preservation Commission had found the properties to be historically significant and had subsequently subjected them to additional restrictions by creating the Olmsted-Richardson Local Historic District. Attorney Dopazo Gilbert further stated that the mitigation package had then been created to preserve both 25 Cottage Street and 222 Warren Street, which constitute the H.H. Richardson House and John Olmsted House, respectively. She added that plans, elevations, extensive

professional photographs of the homes' interiors, 3-D walkthroughs of the homes, and landscaping plans had all been provided to the Preservation Commission.

Attorney Dopazo Gilbert stated that materials would be recycled from both homes to the extent feasible and that a berm, surrounding the new location of 25 Cottage Street, would be recreated in accordance with a request by the Preservation Commission. She also noted that a donation of \$5,000 would be made to the Town for the purchase and installation of a commemorative sign on nearby public property. Additionally, she continued, some or all of the Richardson House bedroom, glass, staircase, fireplaces, interior tile, seating areas, and other items were being donated to a non-profit organization recommended by the Preservation Commission. Ms. Dopazo Gilbert that the Petitioner had collaborated with the Baird Foundation, a nonprofit charitable trust in Buffalo, New York dedicated to preserving items of historic significance as requested by the Preservation Commission.

Attorney Dopazo Gilbert stated that the Petitioner had executed a Memorandum of Understanding with the Baird Foundation that documented the latter's intent to partner with Buffalo State University and one of its masters' programs to preserve various items and eventually display them there. She noted that the donated rooms and items, having already been removed and stored in strict accordance with the recommendations of Mr. Riley, the Preservation Commission's architect. These items will be transported to the Baird Foundation. Attorney Dopazo Gilbert continued that prior to a certificate of occupancy a view shed and landscape restriction will be executed and recorded in the chain of title for both properties. She further stated that the view shed would provide a view of both homes upon the relocation of the structure at 25 Cottage Street.

Attorney Dopazo Gilbert stated that the proposal for 222 Warren Street consists of demolishing a wing of the structure and then constructing a modest two-story addition of 503

square feet, which is designed in the style of the wing it will replace, including by matching its exterior details at the base, corner boards, eaves, and rakes. She added that the home is to remain at its present location and the existing vegetation would continue to provide privacy from adjacent lots. She noted that the rest of the neighborhood consists of similarly sized houses, except for three much larger houses directly across the street. Attorney Dopazo Gilbert continued that there are more than 250 trees at the site, with only the dead or dying ones being removed, as determined by the project's certified arborist, and confirmed with Tom Brady, Town Arborist. Attorney Dopazo Gilbert then stated that, because the proposal includes moving 25 Cottage in front of 222 Warren, creating a rear lot, Special Permit relief was required for the latter's front yard setback. She continued that the required front setback at 222 Warren Street is 50 feet, while the guest parking area's proposed setback would be 13 feet, with the house itself to be setback 28.5 feet. Attorney Dopazo Gilbert then stated that the requested special permit relief was available through the provision of counterbalancing amenities under **Section 5.43** of the Zoning By-Law.

Tony Filardo, the project architect, presented the site plans for 222 Warren Street to the Board of Appeals. In reliance on a digital presentation, Mr. Filardo first stated that the design team had identified, in collaboration with the Preservation Commission, the portions of the house that were most worthy of being preserved. He identified smaller areas of the house that were slated for demolition and replacement by new construction. Mr. Filardo stated that the majority of the existing home at 222 Warren would remain unchanged. He identified various design elements that were to remain untouched, including much of the outline of the existing home. Mr. Filardo noted that the proposed addition would be in the same location as the home's existing wing and that it would better showcase the rest of the historic structure. He then presented a front-view of the

proposed design, adding that the second floor of the addition, like the first, would be located to accentuate the rest of the home's existing design.

Mr. Filardo offered a 360-degree view of the proposal, noting that efforts had been made to emphasize the design of the home's existing tower. Presenting a photograph of the existing house, he then identified a space where the proposed addition would be lower in elevation to better expose the existing home's design. Mr. Filardo further noted the presence of a sleeping porch design, a largely hidden three-car garage, and the design of windows, which had been finalized with the approval of the Preservation Commission. He then presented the elevation plans, noting that the addition was purposefully made lower in height than the existing building so that the appearance of the latter would be unimpeded.

Troy Sober, the project's landscape architect, presented the landscaping plans to the Board. In reliance on a digital presentation, Mr. Sober noted that the landscaping changes, like the rest of the proposal, had been designed in the interest of emphasizing the home's historic character. He continued that a new driveway, providing access to Cottage Road, would be constructed and setback thirteen feet from the front property line, with guest parking spots also being created. Mr. Sober stated that from the driveway, cars could also access the front of the home or the three-car garage. He continued that a slope had been extended, with the approval of the Preservation Commission, to provide for parking and the addition of the garage. Mr. Sober noted that a new pool and outdoor entertainment area were proposed at the home's side and rear.

Mr. Sober continued that much care had been taken to ensure that the new landscaping would provide adequate screening along abutting properties. He added that discussions were ongoing with the Preservation Commission, to finalize a plant palette that would be suitable for the neighborhood. Mr. Sober continued that the landscaping had also been designed to leave an

unobstructed view from the proposed viewshed. He then stated that all landscaping plans were contingent on receiving final approval by the Preservation Commission. Mr. Sober further presented the species of trees and plants, the fence and gate designs, and the concrete and stone surfaces to be used in the proposal, noting that each of the elements had been selected for its natural appearance. He stated that the three-car garage and paved surfaces would largely be shielded from view and that the scale of the proposed parking area was minimal. Mr. Sober then presented the proposed location of outdoor lights, noting that they were designed to support Dark Sky initiatives. He also displayed the expected line-of-sight from the proposed viewshed, adding that the arrangement had been designed to provide a view of the historic home while mitigating impact on residents' privacy.

Attorney Dopazo Gilbert stated that, as part of the mitigation plan and landscape design, the Petitioner had also agreed to erect a commemorative sign near the stone wall at the entrance of the driveway for 25 Cottage. She continued that a more detailed sign would be installed by the Town at the nearby reservoir, in accordance with the wishes of the Commissioner of the Department of Public Works.

Attorney Dopazo Gilbert reviewed the requested zoning relief for 222 Warren. She stated that the proposal had previously been cited under Table of Use Regulations, Use #62. Attorney Dopazo Gilbert noted that because the proposal now includes the four-foot landscaping buffer required under that use, relief was no longer needed. Attorney Dopazo Gilbert then stated that the setbacks from the guest parking area and main house would be 13 feet and 28.5 feet, respectively, whereas fifty feet is required. She continued that relief from these setback requirements was available by Special Permit under **Section 5.43**, with provision of adequate counterbalancing

amenities, included the viewshed restriction, the landscaping plan, the mitigation plan, and the preservation of the structure's historic elements.

Attorney Dopazo Gilbert, noting that the proposal satisfied the conditions for a Special Permit under **Section 9.05**, then stated the following: 1) Specific site is an appropriate location for such use: The site is appropriate for the proposed use of the home as a single-family dwelling, as it is an allowed use in the S-40 district by-right. 2) Use will not adversely affect the neighborhood: The proposal has gone through substantial design review with the Preservation Commission, and it also has the support of the Planning Board. 3) There will be no nuisance or serious hazard to vehicles or pedestrians: The property's on-site circulation will not cause a nuisance or serious hazard to vehicles or pedestrians. A new driveway to Cottage Street, a one-way street, is being provided, while the existing driveway will become the new driveway of 25 Cottage Street. 4) Adequate and appropriate facilities will be provided for the proper operation and proposed use: Adequate and appropriate facilities will be provided for the proper operation of the single-family dwelling. 5) There will be NO effect on the supply on housing available for low and moderate income people.

Chair Geller asked whether the property was subject to any federal or state protection. Attorney Dopazo Gilbert stated that, apart from the properties' being listing in the National Registered District and being subject to a since-lifted 18-month stay of demolition, they were not subject to any protection. Chair Geller then asked whether the interior of the structures were being gutted. Attorney Dopazo Gilbert answered in the affirmative, noting that 25 Cottage had been uninhabitable at the time of its purchase. She continued that everything that the Baird Foundation had selected for preservation had been packaged and stored according to the foundation's instructions, with other salvageable parts of the home to be incorporated into the new structure.

Attorney Dopazo Gilbert noted that good-faith efforts would be undertaken with a recycling company in order to secure the disposal of the rest of the interior items.

Chair Geller then inquired as to the extent of damage at 222 Warren Street, if any. Attorney Dopazo Gilbert stated that the interior of 222 Warren Street was in much better shape, though it still would be gutted. She added that other changes were needed to modernize the structure, relocate a retaining wall, and construct the proposed addition. She added that the Preservation Commission had ensured that many of the items at 222 Warren Street would be preserved including the corner sunroom.

Chair Geller called upon the Planner and Zoning Coordinator, Madison Anthony, to present the Planning Board report for 222 Warren Street.

FINDINGS

§4.07 - TABLE OF USE REGULATIONS, USE #62

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.55 - FRONT YARD REQUIREMENTS

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

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

§8.02 - ALTERATION OR EXTENSION

ZONING: S-40	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Front Yard Setback (Guest Parking Pad)	50	219'-1"	~13'	<u>Special Permit</u> ¹
Front Yard Setback (House)	50	219'-1"	28.5'	<u>Special Permit</u> ¹

¹ **Section 5.43, Exceptions to Yard and Setback Regulations:** Relief from setback requirements can be granted through this section if the applicant can provide an adequate counterbalancing amenity that mitigates negative impacts arising from the requested deviation from the provisions of the Zoning By-law.

² **Section 8.02, Alterations or Extensions:** A special permit may be granted for Alterations or Extensions of a Non-conforming Structure.

§4.07 - TABLE OF USE REGULATIONS, USE #62: A special permit is required for a swimming pool or tennis court in a required side or rear yard unless it is screened from side or rear lot lines by a strip of land at least four feet wide, densely planted with shrubs or trees

which are of a type that may be expected to form a year-round dense screen at least six feet high for swimming pools and at least 10 feet high for tennis courts within three years.

PLANNING DEPARTMENT COMMENTS

Ms. Anthony stated that Planning Department Staff is pleased that this proposal will include the renovation of a noteworthy historic building as part of a thorough process undergone with the Preservation Commission under the Demolition By-Law. She continued that the proposed addition seems appropriately located on the less visible side of the house and is unlikely to generate any adverse impact to the neighborhood. Ms. Anthony added that a view shed easement was proposed to allow the northeast and northwest façades of the historic structure to be partially visible. She further stated that extensive landscaped areas and screening are provided as counterbalancing amenities for the required relief.

Ms. Anthony stated that the Planning Board considers the project design well done with new elements well integrated, given the constraints to match the existing historical structure. She continued that the Board had a few concerns with the limitations of the viewshed easement as presented, but understands the issue was still under discussion with the Preservation Commission. Ms. Anthony noted that the Board suggests including the viewshed easement as part of the required counterbalancing amenities.

Ms. Anthony continued that the Planning Board, therefore, recommends approval of the site plan by EVERETT M. BROOKS, PLS, dated November 18, 2022, and architectural plans by CATHERINE TRUMAN ARCHITECTS, RA, dated January 24, 2023, 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 or designee 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, including the viewshed easement, subject to approval by the Assistant Director for Regulatory Planning or designee.
3. Prior to the issuance of a Certificate of Occupancy, a restrictive covenant with a survey showing the new location of 25 Cottage Street stamped by a registered engineer and depicting a viewshed with landscaping restriction area to be agreed upon and approved by the Preservation Commission and generally located in the area shown on the sketch plan to the request pertaining to 25 Cottage Street shall be executed and recorded in the chain of titles of both properties.
4. 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.

Attorney Dopazo Gilbert stated that she would prefer that the second condition's reference to the viewshed easement be replaced with "the proposed viewshed area," as the easement itself would be determined, in collaboration with the Preservation Commission, only after the structure is moved and a survey is completed. In response to a request for clarification by Mr. Geller, Attorney Dopazo Gilbert stated that once the home at 25 Cottage Street is moved it will be renovated. She continued that while the interior renovations were ongoing at 222 Warren Street, the Petitioner would visit the site with the Preservation Commission once the 25 Cottage Street structure is relocated, at which point final decisions relating to plants, their locations, and their maximum height would be made in order to best align with the intent of the viewshed and landscape restriction.

Chair Geller stated that he believed that a condition, expressly providing for a recorded easement, was still necessary. Attorney Dopazo Gilbert stated that she had no objections to such a condition. Chair Geller also requested that approval be conditioned on implementing the counterbalancing amenities in accordance with the approved plan. Attorney Dopazo Gilbert stated she was amenable to the imposition of such a condition.

Chair Geller called upon Paul R. Campbell, Deputy Building Commissioner, to deliver the findings of the Building Department. Mr. Campbell stated that the Building Department has no objections to the requested relief and that, should the Board grant the requested relief, the Building Department would work with the Petitioner to ensure compliance with the Zoning By-Laws, the Board's decision, and all applicable codes.

The Board then deliberated. Board Member Oge stated that he was in favor of granting the requested relief for both properties. He continued that the applicant offered sufficient evidence to show that the proposal at 222 Warren Street met the requirements for Special Permit relief under **Section 9.05** and **Section 5.09** of the Zoning By-Law and sufficient counterbalancing amenities such as preservation and landscaping were provided to meet the **Section 5.43** requirements. Board Member Oge, noting that he was pleased to see that both the property and the structure would be preserved, voted in favor of granting the requested relief.

Board Member Wishinsky stated that he recalled the original submission of the proposal and the opposition it had received. He continued that the fact that no public comments had been made at the present hearing indicated that the proposal's lengthy review process had been effective at addressing and mitigating concerns. Mr. Wishinsky noted that he was comfortable deferring to the Building Department's interpretation of **Section 5.51** of the Zoning By-Law as it applied to the porch at 25 Cottage and that he was pleased to avoid any conversation about a variance, though he thought such relief would have been warranted. Board Member Wishinsky concluded by voting in favor of granting the requested relief for 222 Warren Street.

Chair Geller then stated that he was pleased to see that the structures would not be completely demolished but that he would have hoped these two historically structures would have found a place in more original preserved condition. He continued that while the Town's forfeiture

of part of its own history was a discouraging reflection of the modern world, the proposal at 222 Warren Street was offering numerous counterbalancing amenities as required under Section 5.43 and otherwise the proposal satisfied the conditions for a Special Permit under Section 9.05. Mr. Geller concluded by voting in favor of granting the requested relief.

The Board also made the following specific findings under Section 9.05 based on the evidence submitted at the hearing and the Board's deliberation:

- 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.

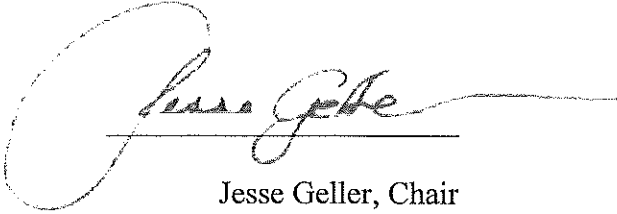
Development will not have any effect on the

Accordingly, the Board voted unanimously to grant the requested relief subject to the following amended 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 or designee 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, including the proposed viewshed area, subject to review and approval by the Assistant Director for Regulatory Planning or designee. The counterbalancing amenities must be executed in accordance with the approved plan.
3. Prior to the issuance of a Certificate of Occupancy, a restrictive covenant/easement with a survey showing the new location of 25 Cottage Street stamped by a registered engineer and depicting a viewshed with landscaping restriction area to be agreed upon and approved by the Preservation Commission and generally located in the area shown on the sketch plan to the request pertaining to 25 Cottage Street and 222 Warren Street shall be executed and recorded/filed in the chain of title for each property.
4. 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.

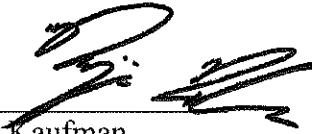
Unanimous Decision of
The Board of Appeals



Jesse Geller, Chair
Zoning Board of Appeals

Filing Date: 5/16/1023

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals