



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

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-000070
24 AUBURN STREET

Petitioner and owner, 24 Auburn Development LLC, applied for a building permit for construction of a three family home, requiring demolition of a structure within the Coolidge Corner Design Overlay District. The application was denied, and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed March 2, 2023 at 7:00 PM, for a virtual public hearing as the date, time and place of a hearing for 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 February 16, 2023, and February 23, 2023, in the *Boston 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, March 2, 2022

Location: Virtual Hearing

Virtual Registration Link: <https://bit.ly/3xj20tp>

Petitioner: 24 Auburn Development LLC

Address: 24 Auburn Street

Subject: Demolition of existing structure and construction of new three-family home

Nature of Action/Relief:

§5.01-TABLE OF DIMENSIONAL REQUIRMENTS, FOOTNOTE1; §5.09.2.M - DESIGN REVIEW; §5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS; §5.51 - PROJECTIONS INTO FRONT YARDS; §6.04.14 - DESIGN OF ALL OFF-STREET PARKING FACILITIES

Plans and submissions may be viewed online at

<https://www.brooklinema.gov/DocumentCenter/Index/3707>

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: 2/16/2023 & 2/23/2023

On April 13, 2023, the Zoning Board of Appeals held a public hearing. On March 15, 2023, Counsel for the Petitioner appeared before the Board to request that the hearing be continued to a date certain of April 27, 2023, which request was granted. The Board held its public hearing, at the time (as modified) and place specified in the notice on April 27, 2023.

Present at the hearing was Chair Johanna Schneider, and Board Members Randolph Meiklejohn and Wadner Oge. The case was presented by Attorney Scott C. Gladstone, 822 Boylston St.,

Suite 300, Chestnut Hill, Massachusetts 02467. Chair Schneider called the hearing to order at 7:00 p.m.

Attorney Gladstone waived the reading of public notice and explained the background of the case as follows: as a result of pre-design discussions with the neighbors, the building is proposed to be built in a mansard roof style with bays and other design elements that are found in several other residential buildings in the neighborhood. As such, the building should fit well within the context of the neighborhood. Elements of the design have been substantially re-worked per direction of the Planning Board. Changes include reducing the building height by one story and placing the parking underground. The change in parking both permitted the height reduction and removed a proposed row of garage doors facing Washburn Place, which eliminated the need for relief under **Section 6.04.14**. Both solutions eliminate the current conditions, which has provided outdoor parking for 11 cars, right up against the lot lines of both Auburn Street (2-car wide driveway with a curb cut on Auburn Street) and Washburn Place (a house-length curb-cut on Washburn Terrace that accommodates surface parking for another 9 vehicles).

Attorney Gladstone also explained that the current house has no garage parking and that the proposed new building will eliminate the parking area accessed from Washburn Place and replace that with landscaped and usable open space. The current parking area accessed from Auburn Street will be converted into a driveway descending to the rear of the building to access the underground parking. In response to comments from the Planning Board, the fencing surrounding this new driveway was pulled back 6 feet from the street in order to improve visibility and safety.

As was the case with the original design, the project also requires relief for a small overhang over the main entrance that adds to both the aesthetics and the function of the dwelling.

Attorney Gladstone explained the standards of relief to be applied, saying:

Parking driveway setback: In order to accommodate the Planning Board's request that the parking be placed underground, petitioner proposes a new driveway accessing the underground parking, which replaces a portion of the existing parking area abutting Auburn Street. The proposed driveway is narrower than the existing parking area. However, the proposed driveway is less than the required 5' rear lot line setback set forth in Zoning By-Law Section 6.04.5.C.3. Special permit relief is available, with the provision of counterbalancing amenities, pursuant to Section 5.43. While additional landscaping is being added per the Planning Board recommendations, Attorney Gladstone opined that the elimination of outdoor parking within the front setback can be considered a counter-balancing amenity as it will be a substantial visual improvement to Washburn Place.

Underground garage setback: Attorney Gladstone noted that the current building already violates the side yard setback, wherein the new proposed building is pulled back to be in compliance with the setback requirement. However, in order to comply with the directions of the Planning Board, which is requiring underground parking, the resulting underground structure is within the side setback and the front setback facing Washburn terrace as set forth in Zoning By-law Section 5.44.2.d governing accessory underground structures. The elevations show that the underground garage comes above grade only 1' 9", which is less than the allowed 3' per Section 5.44(2)(a). These incursions into the side and front yards may be given relief by special permit via a via Sections 5.44.3 and 5.44.4; and/or, via Section 5.43 with the inclusion of counterbalancing amenities.

Counterbalancing amenities: For counterbalancing amenities, Attorney Gladstone explained that the plans provide two significant benefits. First, the fence proposed to run up against the Washburn Place abutter's driveway has been pulled back 2'8" so that the abutters can open their car doors over the 24 Auburn Street lot. The owner has given permission for what otherwise would be considered a trespass, even though the abutters have room on their driveway to park closer to their own landscaped yard. Secondly, the access lane between the parking rows of the underground garage has been narrowed to enable the architect to pull the parking structure bump-up away from Washburn Place by 2' 6". The resulting strip, which was requested by the Planning Board, will accommodate plantings to provide a green screen to hide the garage structure bump-up. Attorney Gladstone explained that this was a considerable effort, but the design team managed to do it to satisfy the Planning Board's requirements for counterbalancing amenities. Third, in response to comments from the Planning Board, mullions were added to the windows throughout the proposed building.

Front setback: The bay and the front portico/balcony project 3 ½ feet into the front yard setback facing Auburn Street, and together they exceed ½ of the length of the entire front wall, which is more than allowed by right pursuant to **Section 5.51**. Attorney Gladstone explained that this requires a special permit pursuant to **Section 5.43**. As a counter-balancing amenity, the project owner points to the design elements that the projection is adding to the front public-facing façade of the building and the project owner will provide enhanced landscaping in the front, including replacement of an unkempt, misshapen Ash tree, at the request of the Planning Board.

Additional counterbalancing amenities: Attorney Gladstone explained that, by making all the proposed underground parking spaces EV ready, the proposed building exceeds the

requirement in the Zoning By-Law. Similarly, by providing parking for multiple bicycles in the underground garage, the proposed building exceeds the requirement of the Zoning By-Law. Also, as stated above, a proposed lot line fence has been pulled back from the side lot line in order to accommodate the abutters opening their car doors over the petitioner's lot. Finally, Attorney Gladstone explained that the current landscaping, such as it is, has suffered from neglect for many years under prior owners and the current proposal includes great improvements to the green spaces, which will benefit the entire block.

Mr. Gladstone noted that under either formulation the requirements of Zoning By-Law

Section 9.05 have been met as follows:

- a. The site is an appropriate location for such a use, structure, or condition: The proposed project is a three family in an F-1.0 district and so is an allowed use and is next door to a larger multi-family development at Auburn Court.
- b. The proposed use will not adversely affect the neighborhood as the prior use was also an unrecognized three-family and the new structure will be a visual improvement over the current tired structure and is not oversized as it complies with the F.A.R. and generously complies with height requirements. The setback relief that is required is modest and is an improvement over the existing structure's setbacks and parking. The mansard roof tastefully mimics the style of many of the other residential structures in the immediate area. Moving all parking to the interior of the proposed building substantially improves the streetscape of both Auburn Street and Washburn Terrace.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians since there is already parking on the site, and the new parking will enter and exit from one driveway as opposed to the previous two driveway/parking areas. Moreover, the number of cars parking at the building will be reduced from a maximum of 11 down to a maximum of 6. Finally, the elimination of 9 outdoor spaces on Washburn Place and its replacement with a deck and landscaping will be a substantial improvement to vehicular and pedestrian safety as well as curb appeal.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. See all of the above.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people as the proposal does not take away any current housing and, in fact, increases the housing stock of the Town.

Attorney Gladstone also explained that, since the project falls under design review, there needed to be an environmental impact and design statement, which Attorney Gladstone supplied as follows:

- a. *Preservation of Trees and Landscape. Trees and other landscape features shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas. Public shade trees within the public right-of way are governed by MGL Chapter 87 and where feasible, shall be preserved and appropriate addition of such trees is encouraged.*

There are currently 3 small trees, 1 large tree (a not well cared for Ash), an unkempt rose bush and a hedge on the site on this site, but no other significant landscaping features. In general, the existing landscaping is unkempt and in disrepair. Efforts could be made to save and retain the small birch tree, the size of a bush, in the rear yard, but the rest of the existing landscaping is within or too close to the new building envelope, and will have to be removed. New landscaping is proposed, including the addition of 2 new trees, shrubbery, ornamental grasses and flowering plants, all tasteful and in keeping with the general appearance of the neighborhood (see Landscaping Plan). This, combined with the elimination of the driveway parking on Washburn Place and its replacement with landscaped area, will result in a substantial improvement over the existing conditions.

- b. *Relation of Buildings to Environment. Proposed development shall be related harmoniously to the terrain, trees, landscape, and natural features. The Board of Appeals may require a modification in massing so as to reduce the effect of shadows on abutting property or on public open space and public streets.*

See part (a) above. Moreover, the main above-grade building that is being proposed (not including the garage bump up) does not require any dimensional zoning relief other than for a small overhang over the main entrance that adds to both the aesthetics and the function of the dwelling. The building is proposed to be built in a mansard roof style with bays and other design elements that are found in several other residential buildings in the neighborhood.

- c. *Proposed development shall be consistent with the use, scale, yard setbacks and architecture of existing buildings and the overall streetscape of the surrounding area... Unenclosed street level parking along the frontage of any major street a listed in paragraph 2.,subparagraph a. of this section is strongly discouraged. Otherwise street level parking should be enclosed and screened from view.*

See sections (a) and (b) above. Moreover, the current house has no garage parking. There is currently four cars of outdoor parking on a 2-car wide driveway with a curb

cut on Auburn Street and another nine cars parked against the house on Washburn Place. The proposed new underground parking will eliminate the parking area accessed off Washburn Place and replace that with landscaped open space.

- d. *Open Space. All open space (landscape and usable) shall be so designed as to add to the visual amenities of the vicinity by maximizing its visibility for persons passing the site or overlooking it from nearby properties. The location and configuration of usable open space shall be so designed as to encourage social interaction, maximize its utility, and facilitate maintenance. All landscaped open space shall be continuously maintained.*

By eliminating the parking area off Washburn Place and replacing it with landscaped open space and a deck, the Washburn Place streetscape will be substantially improved. Similarly, removing the existing surface on Auburn Street by moving it underground will also be a significant visual improvement.

- e. *Circulation. With respect to vehicular, bicycle and pedestrian circulation, including entrances, ramps, walkways, drives, and parking, special attention shall be given to location and number of access points to the public streets (especially in relation to existing traffic controls and mass transit facilities), width of interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, access to community facilities, demand for and availability of bicycle parking and storage facilities, and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the use and enjoyment of proposed buildings and structures and the neighboring properties*

Safety will be improved with the elimination of the parking area fronting on Washburn Place. Fencing for the new driveway accessing the underground parking is pulled back from Auburn Street to improve safety and visibility.

- f. *Stormwater Drainage—Special attention shall be given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. Storm water shall be removed from all roofs, canopies and paved areas and carried away in an underground drainage system. Surface water in all paved areas shall be collected at intervals so that it will not obstruct the flow of vehicular or pedestrian traffic, and will not create puddles in the paved areas*

Storm water will be managed in accordance with the storm water by-law and will not be substantially different from the existing similarly-sized structure on the site.

- g. *Utility Service —electric, telephone, cable TV and other such lines and equipment shall be underground from the source in the public way to all buildings on the site. The location and screening of transformers and dumpsters shall be indicated on the site plan. The proposed method of sanitary sewage disposal and solid waste disposal shall be indicated.*

Utilities service will be treated as it always has been on this site.

- h. Advertising Features—Not applicable*
- i. Special Features—exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures whether on the building or on the ground, shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties.*

The area for garbage and recycling is substantially screened within a partial enclosure built into the proposed structure.

- j. Safety and Security—With respect to personal safety, all open and enclosed spaces shall be designed to facilitate building evacuation and maximize accessibility by fire, police, and other emergency personnel and equipment. Insofar as practicable, all exterior spaces and interior public and semi-public spaces be so designed as to minimize the fear and probability of personal harm or injury by increasing the potential surveillance by neighboring residents and passersby of any accident or attempted criminal act.*

There is very little internal common area. Each unit is equipped with the necessary egresses.

- k. Heritage—With respect to Brookline's heritage, removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or on adjacent properties.*

The demolition has gone through the Preservation review process and the demolition stay has expired.

- l. Microclimate—With respect to the localized climatic characteristics of a given area, any development which proposes new structures, new hard-surface ground coverage, or the installation of machinery which emits heat, vapor, or fumes, shall endeavor to minimize, insofar as practicable, any adverse impact on light, air, and water resources, or on noise and temperature levels of the immediate environment. The development shall comply with the provisions of the Noise Control By-law.*

Since this will be 100% new construction, it will have to comply with all applicable codes for energy efficiency and noise. There will be less hard-surface ground cover adjacent to the streets than is currently existing. This will continue to be a residential use.

- m. Energy Efficiency—To the maximum extent possible, proposals shall utilize energy-*

efficient technology and renewable energy resources and shall adhere to the principles of energy-conscious design with regard to orientation, building materials, shading, landscaping, and other elements. Efforts shall be made to harmonize energy-related components with the character of the building and its surroundings and to prevent adverse effects on the energy consumption of neighboring structures and on the environment.

See section L.

Zoning Board of Appeals Chair Schneider invited the Board members to ask questions.

Member Meiklejohn asked about some of the requirements of **Section 5.44** with regard to height of an underground structure and Attorney Gladstone explained that the limit was 3' and the proposed height is less than 2'. Board Member Meiklejohn also asked about the front setback numbers in the Planning Board report and Attorney Gladstone showed in the plans where the numbers were as reported for the design iteration under consideration and noted that the chart in the Planning Board report might have mistakenly been referring to a prior iteration of the underground garage.

Board Member Oge asked what the arrangement was with respect to the abutter's ability to open their car doors over the project lot line. Attorney Gladstone answered that a license was being given to allow that car door trespass to continue. Member Oge noted that licenses can be revoked. Attorney Gladstone agreed. Chair Schneider asked that the proposed landscape plan be explained in detail, which the manager for the petitioner LLC did.

After recognizing receipt of the written comments that had been submitted, Board Chair Schneider invited the public to make any comments in support or against the application. Gareth Parry of 1 Washburn Place, Apartment 2, said the following: Mr. Parry asserted that there were never more than 6-7 cars parked in the driveway facing Washburn Place. Mr. Parry found counsel's use of the word "trespass" to describe his opening of his car door over the lot line to be inflammatory; but, he also acknowledged that the word "trespass" is a legal term and that he appreciates being able to open his car door over the property line. Mr. Perry expressed his appreciation for the changes that the

developer made, including pulling back the fence to permit him to continue to open his car door over the property line.

Board Chair Schneider called upon Madison Anthony, Planner for the Town of Brookline, to deliver the findings of the Planning Board. Ms. Anthony explained as follows

PLANNING DEPARTMENT STAFF COMMENTS

The Planning Staff is pleased with the reduction of massing as a result of the new parking arrangement. The building was reduced from four to three-story, better matching the height of neighboring homes. The proposed three-story building is located in an F-1.0 district with a footprint approximate to the existing structure; therefore, it is unlikely to generate significant adverse impacts to the surrounding areas. The Planning Department Staff appreciates that all parking stalls are being made EV-ready and bike storage is being provided, contributing to the Town's sustainability policy. As a new building, Staff strongly recommends that the structure be made fossil-fuel-free as a tradeoff for the carbon emissions caused by demolition.

Staff is also pleased that the existing 68" diameter Ash tree on Auburn Street will be replaced since the tree is in bad shape. As a result of placing the garage below grade level and the increase in 2 feet setback on Washburn Place, the new plan offers a better streetscape on Washburn Place. The addition of new trees along the sidewalks on Auburn Street and Washburn Place, subject to approval by the Tree Planting Committee, would further improve the streetscape, offer shadow to pedestrians, and adequate screening. This pattern is verified along the majority of the lots on Auburn Street. Finally, Staff recommends using permeable pavers to minimize the impact of impervious surfaces. The proposed walkway on the back of the house seems unnecessary and could be replaced with more natural options such as gravel.

PLANNING BOARD COMMENTS

After several interactions, the Board is pleased with the revised design and is supportive of the proposal. The revised design places parking on an underground garage which eliminated one floor and reduced the building's height. A better streetscape was provided on Washburn Place with a landscape strip as part of the proposed counterbalancing amenities. Window types were defined and front bays were reduced to be in keeping with the neighborhood context.

The Planning Board recommends approval of the site plan by PETER NOLAN & ASSOCIATES, PLS, revised on 4/10/2023 and architectural plans by BENJAMIN SCHULTZ ARCHITECT, revised on 4/8/2023, 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 that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning or designee.

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, 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 Paul Campbell to speak on behalf of the Building Department. Mr. Campbell reported that the Building Department has no objection to the proposal and that the Building Department would ensure that all provision of the code and any conditions would be enforced.

In deliberation, Member Oge stated that he appreciated that the developer listened to the neighborhood concerns and addressed them and that petitioner provided sufficient information to satisfy the requirements of **Section 9.05** with sufficient counterbalancing amenities. Member Oge expressed his preference that, should the fence around the proposed deck be moved to the property line with the abutter, that the petitioner should first seek a modification of the special permit that the board was considering.

Member Meiklejohn expressed his agreement with Member Oge and recognized that looking at the prior iterations of the design showed how the petitioner engaged in good problem solving with respect to putting the parking underground, which triggered the need for further relief. Member Meiklejohn observed that shrinking the garage to create a 2'8" wide landscape strip will aid in storm water management as the storm water running off the deck will have somewhere to be absorbed on the lot, thus mitigating the possibility of runoff causing icing on the street in the winter. Member Meiklejohn also noted that the environmental impact statement adequately addresses all the issue

raised for design review and that the proposed counterbalancing amenities are reasonable and valuable.

Chair Schneider expressed her appreciation of the petitioner's efforts and problem-solving cooperation, which lead to a good result. Chair Schneider also found the proposed counterbalancing amenities to be adequate.

The Board of Appeals then determined by unanimous vote that the requirements for a Special Permits under Sections 5.09.2.M, 5.43, 5.44.3, 5.44.4, 5.51, 6.04.5.C.3 have been met. The Board found that the elements of Section 9.05 have also been satisfied:

- a. The specific site in 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.*

Accordingly, the Board of Appeals voted unanimously to grant the requested relief for the site plan by PETER NOLAN & ASSOCIATES, PLS, revised on 4/10/2023 and architectural plans by BENJAMIN SCHULTZ ARCHITECT, revised on 4/8/2023, subject to the following conditions:

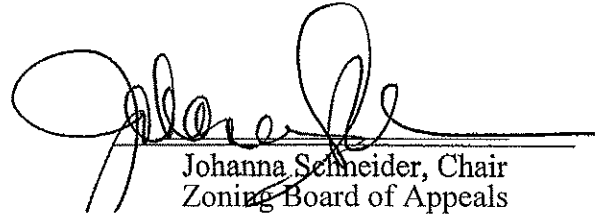
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2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan that shows proposed counterbalancing amenities subject to

approval by the Assistant Director for Regulatory Planning or designee.

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, 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


Unanimous Decision of
The Board of Appeals



Johanna Schneider, Chair
Zoning Board of Appeals

Filing Date: 5/25/2023

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals