

*Town of Brookline
Massachusetts*

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathon Book

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2013-0034

Petitioner, Arden Reamer, applied to the Building Commissioner for permission to construct a garage and move the rear lot line between 72 Stedman Street and 73 Beals Street. The application was denied and an appeal was taken to this Board.

On April 11, 2013 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed May 23, 2013 at 7:15 p.m. in the Selectmen's hearing room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to their 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 May 9, 2013 and May 16, 2013 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows: {

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: Arden Reamer

Owner: Arden Reamer

Location of Premises: 72 Stedman Street

Date of Hearing: May 23, 2013

Time of Hearing: 7:15 p.m.

Place of Hearing: Selectmen's Hearing Room, 6th Floor

A public hearing will be held for a variance and/or special permit from:

- 1. Section 5.43: Exceptions to Yard and Setback Requirements**
- 2. Section 5.72: Accessory Buildings or Structures in Rear Yards**
- 3. Section 6.05.5.c.2: Design of All Off-Street Parking Facilities**
- 4. Section 6.05.5.c.3: Design of All Off-Street Parking Facilities**
- 5. Section 8.02.2: Alteration of Extension**

of the Zoning By-Law to construct a garage in the rear of the property and move the rear lot line between 72 Stedman Street and 73 Beals Street.

Said premise located in a **T-5 district**.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

**Jesse Geller
Jonathan Book
Christopher Hussey**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jesse Geller, and Board Members Christopher Hussey and Jonathan Book. The case was presented by the attorney for the petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was Arden Reamer, the owner of 72 Stedman Street and 73 Beals

Street, Kevin Taback, the co-owner of 73 Beals Street, and Chris Hosford, the petitioner's architect.

Chairman Jesse Geller, called the hearing to order at 7:15 p.m. Attorney Allen stated that the Petitioner proposes to construct a new garage at 72 Stedman Road which requires zoning relief to the side and rear yard setbacks. The Petitioner also proposes to move the rear lot line between 72 Stedman Street and 73 Beals Street through an "approval not required" (ANR) Subdivision Plan.

Attorney Allen presented to the Board a background of the properties, stating the Petitioner was before the Zoning Board of Appeals in November 2012 for a small exterior in-fill addition and removal of the fire escape at 72 Stedman Street. Attorney Allen stated that the Petitioner now seeks to add a garage to the property to continue his hobby of collecting and fixing up old cars

Attorney Allen stated that, in order to address the insufficient lot coverage, the Petitioners propose to move the rear lot line of 72 Stedman Street through an ANR Subdivision so it would not be greater than 25 percent. Attorney Allen stated that moving the lot line as such will make Stedman Street compliant with the previously nonconforming rear yard setback. Moving the lot line at 72 Stedman will, however, create a side yard setback nonconformity for 73 Beals Street. Attorney Allen stated that relief could be granted under Section 5.43 of the Zoning By-Law.

Architect Chris Hosford from the Helios Design Group, stated that the plan takes 389 square feet from 73 Beals Street and adds it to 72 Stedman resulting in the garage complying with the 25 percent rear yard requirement. Furthermore, Mr. Hosford described the wood frame design with clapboard construction and explained that the garage includes an elevated dormer to accommodate the headspace necessary to lift the car up to work on it.

Zoning Board Member Christopher Hussey inquired about the construction materials for the existing garage at 73 Beals Street. Mr. Hosford responded that the materials are concrete cinderblock. Board Member Hussey asked about the wood frame design and Mr. Hussey confirmed that the design required a fire rating. Furthermore, Board Member Hussey asked how the narrow area between the two garages would be accessed for cleaning, repair and maintenance. Mr. Hosford explained that the area between the existing garage and the proposed garage is 24 inches and that the space will be able to be maintained. Board Member Hussey commented that he agreed with the suggestion of the Planning Board Member that the garages abutt one another. Mr. Hosford responded that doing so would be aesthetically less pleasing because the eave of the roof would need to be removed. Mr. Hosford also explained that the use of fiber cement would help maintain the area between the garages.

Attorney Allen then resumed his presentation to the Zoning Board of Appeals. Attorney Allen stated that the proposal comes before the Zoning Board of Appeals with the support of immediate abutters and neighbors. Attorney Allen confirmed with Town Planner Timothy Richard that a majority of the Planning Board supported the proposal, recognizing that one Planning Board Member supported a zero-lot line so that the structure would be easier to maintain.

Attorney Allen discussed that the two lots are in common ownership and both lots will be above the minimum lot size of 5,000 square feet after the line adjustment. The existing garage on 73 Beals Street will have a nonconforming side yard setback after the reconfiguration and the rear lot line will continue to be non-conforming. Attorney Allen asked for relief under **Section 5.43** of the Zoning By-Law to allow a special permit to be issued and repeated that the rear lot on Stedman Street would now be in compliance with requirements under the Zoning By-Law.

Attorney Allen next discussed zoning relief for the proposed garage at 72 Stedman Street, stating that there will be two feet between the garage and the rear and side property lines, which is consistent with other garages on Beals Street, as well as the garage next door. Attorney Allen stated that the distance between the corner of the garage and the house is approximately 5.2 feet and, while the Petitioners could remove a corner of the garage to comply, it is more uniform to keep the garage a true square and to seek relief under **Section 5.43**. Attorney Allen cited a recent Brookline Zoning Board of Appeals decision where similar relief was granted to allow for a garage within the 6 foot requirement on Powell Street. Attorney Allen discussed counterbalancing amenities, including a landscape plan, a fence between 72 Stedman Street and 73 Beals Street, and a fence between the new garages and the neighboring property.

Finally, Attorney Allen discussed relief under **Section 8.02.2** of the Zoning By-Law, whereby a special permit is required under **Section 9.05** of the Zoning By-Law to alter and/or extend a non-conforming structure. As for **Section 9.05** of the Zoning By-Law, Mr. Allen noted:, (1) the specific site is an appropriate location; (2) there will be no adverse affect to the neighborhood; (3) no nuisance or serious hazard to vehicles or pedestrians exists; (4) adequate and appropriate facilities will be provided for the proper operation; and (5) development will not have a significant adverse effect on the supply of housing available for low and moderate income people.

The Board Members then asked several questions about the proposal. Chairman Jesse Geller asked why the side yard set-back relief was not cited under **Section 5.60** of the Zoning By-Law. Chief Building Inspector, Mike Yanovitch responded that **Section 5.72** of the Zoning By-Law was cited on his denial letter to the Petitioners. Chairman Geller engaged in discussion about why the design of off-street parking was addressed by **Section 5.43** and not **Section**

6.04.12. Chief Building Inspector, Mike Yanovitch, stated **Section 5.43** grants dimensional relief for side yard setback and **Section 6.04.12** usually applies to parking areas or parking lots of six or more vehicles where petitioners cannot meet the dimensional requirements for stalls, backing area, or access. Chairman Jesse Geller stated that he wanted to make sure the appropriate relief was granted.

Chairman Jesse Geller asked if anyone present wanted to speak in favor of the application. Kevin Taback, an immediate abutter, said the garage will be one of the best looking in the neighborhood and it will add to the aesthetic and value of the neighborhood.

Zoning Board of Appeals Chairman Jesse Geller asked if there was anyone present who wished to speak in opposition of this application. No one spoke in opposition.

FINDINGS

Section 5.43 – Exceptions to Yard and Setback Requirements
Section 5.72 – Accessory Buildings or Structures in Rear Yards

Section 6.05.5.c.2 – Design of All Off-Street Parking Facilities

Section 6.05.5.c.3 – Design of All Off-Street Parking Facilities

Dimensional Requirements	Required/Allowed	Existing	Proposed	Relief
Rear Yard Setback (72 Stedman Street garage)	6 feet	N/A	2 feet	Special Permit*
Rear yard Setback (73 Beals Street garage)	6 feet	N/A	2 feet	Special Permit*
Side Yard Setback (72 Stedman Street garage)	6 feet	N/A	2 feet	Special Permit*
Side Yard Setback (73 Beals Street existing garage)	6 feet	39 feet	0 feet	Special Permit*

* Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.

Section 8.02.2 – Alteration or Extension

A special permit is required for alterations to a dimensionally nonconforming structure.

Mr. Richard stated that the Planning Board is supportive of this proposal. The garage will be attractive and the landscaping will provide the appropriate counterbalancing. There was one member of the Planning Board in opposition because the garages did not butt up against one another; however, the rest of the Planning Board understood why the petitioner wanted the separation. Therefore, the Planning Board recommends approval (Voted 5-1) of the plans by Helios Design Group, Inc, dated 2/15/13, and the proposed subdivision plan by Boston Survey, Inc. dated 2/1/13 subject to the following conditions:

1. Prior to issuance of a building permit, final elevations, indicating all exterior alterations and proposed materials shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, a landscaping plan showing all counterbalancing amenities shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered land surveyor; 2) final elevations, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department had no objections to the relief sought under this application. The relief requested is minimal, the use is compatible with the area, and the Building Department will work with the Petitioner if relief is granted to ensure all codes are compliant.

In deliberation, Zoning Board of Appeals Member Jonathan Book stated that he was in support of the relief requested and did not have a problem with the issue of whether or not there is a space between the garages.

Zoning Board of Appeals Chairman Jesse Geller asked if a subdivision plan had been approved. Attorney Allen stated the Planning Board approved the plan and confirmed the plan matched what was presented to the Zoning Board of Appeals. The Chairman stated his opinion that the structures should be separated from an aesthetic standpoint. Zoning Board of Appeals Member Christopher Hussey remarked that the back elevation would not be visible, but that he would not hold up the approval. Zoning Board of Appeals Chairman Geller stated that he was otherwise in favor of relief. Attorney Allen stated the Petitioners struggled with the decision, but ultimately felt this was a better way to go. Zoning Board of Appeals Chairman Geller stated that the project was worthy of relief.

The Board then determined, by unanimous vote that the requirements for special permit relief from the requirements of 5.72, 6.05.c.2, 6.05.c.3 and Section 8.02.2 of the Zoning By-Law as requested pursuant to Sections 5.43 and 9.05 of the Zoning By-Law were met. The Board made the following specific findings pursuant to said Section 9.05:

- 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.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1. Prior to issuance of a building permit, final elevations, indicating all exterior alterations and proposed materials shall be submitted to the Assistant Director of Regulatory Planning for review and approval.**

2. Prior to the issuance of a building permit, a landscaping plan showing all counterbalancing amenities shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered land surveyor; 2) final elevations, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

RECEIVED
TOWN OF BROOKLYN
TOWN CLERK
A 10 55
JUN 19 2013
Filing Date: June 19, 2013
A True Copy
ATTEST:



Jesse Geller, Chairman



Patrick J. Ward
Clerk, Board of Appeals