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TOWN OF BROOKLINE

# Town of Brookline Massachusetts

**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Christopher Hussey  
Jonathan Book

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2013-0054  
ALDO & MARILYN GONZALEZ

Petitioners, Aldo and Marilyn Gonzalez, applied to the Building Commissioner for permission to construct a garage in the rear yard at 37 Corey Road. The application was denied and an appeal was taken to this Board.

On July 24, 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 August 29, 2013 at 7:00 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 August 15, 2013 and August 22, 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: Aldo & Marilyn Gonzalez**

Owner: **Aldo & Marilyn Gonzalez**  
Location of Premises: **37 Corey Road**  
Date of Hearing: **August 29, 2013**  
Time of Hearing: **7:00 p.m.**  
Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup> Floor**

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

1. **Section 5.43: Exceptions to Yard & Setback Regulations**
2. **Section 5.72: Accessory Buildings or Structures in Rear Yards**  
(Less than 6 feet from lot line rear)  
(Less than 6 feet from lot line side)
3. **Section 6.04.5.c.3: Design of All Off-Street Parking Facilities**
4. **Section 6.04.12: Design of All Off-Street Parking Facilities**
5. **Section 8.02: Alteration and Extension**

of the Zoning By-Law to construct an attached single-family for a second dwelling unit.

Said premise located in a **S-7 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  
Christopher Hussey  
Jonathan Book**

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 Mark Zuroff and Johanna Schneider. 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 were Marilyn Gonzalez, owner of 37 Corey Road and Rocky Johnson the petitioner's architect.

Zoning Board of Appeals Chairman Jesse Geller called the hearing to order at 7:15 p.m. Attorney Allen stated that the Petitioners propose to extend the existing driveway and construct a two-car garage within the side and rear yard setback of the property located at 37 Corey Road. Attorney Allen stated that the neighborhood is comprised primarily of single-family dwellings that are similar in overall bulk and style. Attorney Allen stated that the site plan for the neighborhood demonstrates that roughly sixty (60%) percent of the homes include a similarly situated, separate garage located in the rear yard.

Attorney Allen described the details of the proposed two-car garage, which includes a single garage door, two separate bays, and a dormer in the front and rear of the garage to create storage space. Attorney Allen stated that the dormer is incorporated into the garage's current design, but is still under consideration by the Petitioners. Attorney Allen noted that this proposal could have been done as of right by pulling the garage away from the side and rear of the property line, but this would have created a difficult angle for ingress and egress from the garage. Attorney Allen stated that by repositioning the location of the garage, the visibility for drivers and pedestrians will greatly improve for drivers and pedestrians accessing Corey Road.

Attorney Allen stated that the proposal comes before the Zoning Board of Appeals with the unanimous support of the Planning Board. Attorney Allen stated that the Planning Board appreciated how the Petitioners' architect was able to incorporate the features of the home into the design of the garage. Attorney Allen stated that several neighbors spoke in support of the proposal at the Planning Board meeting on August 15, 2013. In addition, Attorney Allen stated that the rear abutters were present to speak in support of the proposal. Attorney Allen stated that

the Planning Board discussed counterbalancing amenities, which include permeable pavers and a landscaping and/or fence plan between 37 Corey Road and the rear abutting neighbors at 121 Salisbury Road. Attorney Allen stated that it is customary for the landscaping and/or fence plan to be approved by Assistant Director for Regulatory Planning.

Attorney Allen stated that the Petitioners are requesting special permit relief from Section 5.43, Section 5.72, Section 6.04.5.c.3, and Section 6.04.12 of the Zoning By-Law to waive setback and dimensional requirements for rear and side yard setback. Attorney Allen stated that the Petitioners' proposal includes 3.3 feet for rear yard setback and 1-foot side yard setback. Attorney Allen stated that Section 6.04.5.c.3 of the Zoning By-Law requires 5 feet for rear yard setback and 5 feet for side yard setback, but Section 5.43 of the Zoning By-Law permits the Zoning Board of Appeals to waive setback requirements if a counterbalancing amenity is provided. Attorney Allen stated that the counterbalancing amenities include permeable pavers and a landscaping and/or fence plan. Furthermore, Attorney Allen stated that Section 5.43 permits the Zoning Board of Appeals to waive the dimensional requirements of Section 5.72. Mr. Allen stated that Section 6.04.12 of the Zoning By-Law allows the Board to substitute dimensional requirements where a new parking facility is installed to serve an existing structure.

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, Attorney Allen noted: (1) the specific site is an appropriate location where the proposed use will not change and is consistent with other homes in the S-7 District; (2) there will be no adverse affect to the neighborhood where the garage will be located on the rear of the lot and is attractively designed

to create two new parking spaces in the rear lot; (3) there will be no nuisance or serious hazard to vehicles or pedestrians where parking will be removed from the front yard setback, thus creating more visibility for pedestrians and a better sight-line for drivers; (4) adequate and appropriate facilities will be provided for the proper operation; and (5) the development will not have a significant adverse effect on the supply of housing available for low and moderate income people.

The Zoning Board of Appeals members then asked several questions about the proposal. Zoning Board of Appeals Chairman Jesse Geller inquired about the visibility of the new garage to abutting properties. Attorney Allen deferred the question to the Petitioners' architect Rocky Johnson, of 1 Fitchburg Street, Somerville, Massachusetts. Mr. Johnson presented to the Board the site plan and architectural drawings showing the visibility of the new garage. Zoning Board of Appeals Member Mark Zuroff inquired about notice to the immediate abutting property owners. Attorney Allen stated that the Petitioners' provided notice to the immediate abutters, none of which have taken issue with the proposal. Zoning Board Member Mark Zuroff inquired about the number of garages in the neighborhood. Attorney Allen presented the site plan to the Zoning Board of Appeals Members which showed numerous homes having similarly situated garages.

Zoning Board of Appeals Chairman Jesse Geller asked if anyone present wanted to speak in favor of the application. Srinivasan Mukundan, 121 Salisbury Road, spoke in favor of the proposal stating that there was some concern with the drainage from the site, but the plans by Arcadia Design Studio show that there is no present issue with the drainage.

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

Zoning Board of Appeals Chairman Jesse Geller called upon Polly Selkoe, Assistant Director for Regulatory Planning, to deliver the findings of the Planning Board:

**FINDINGS**

**Section 5.43 – Exceptions to Yard and Setback Regulation**

**Section 5.72 – Accessory Buildings or Structures in Rear Yards**

(Less than 6 feet from lot line rear)

(Less than 6 feet from lot line side)

<b>Dimensional Requirements</b>	<b>Required/Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Rear Yard Setback (garage)</b>	5'	N/A	3.3'	Special Permit*
<b>Side Yard Setback (garage)</b>	5'	N/A	1'	Special Permit*

\* Under Section 5.43, the Board of Appeals may waive setback requirements if a counterbalancing amenity is provided. The Board of Appeals may also grant a special permit that waives dimensional requirements for a new parking facility that serves an existing structure

**Section 6.04.5.c.3 – Design of All Off-Street Parking Facilities**

**Section 6.04.12 – Design of all Off-Street Parking Facilities**

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter a nonconforming structure or use.

Assistant Director Selkoe clarified the Planning Board Report by stating that the proposal is to construct a two-car garage that will have a single garage door. Assistant Director Selkoe stated that the Planning Board is supportive of the proposal. Assistant Director Selkoe stated that the driveway expansion and construction of the garage would create two new parking spaces for the dwelling. Assistant Director Selkoe stated that the garage is attractively designed and will be located to the rear of the dwelling. Assistant Director Selkoe stated that there is a chain link fence on the side and rear property line and the Planning Board recommends that the Petitioners either replace the fence with a more substantial fence to screen the new garage, or install landscaping that will sufficiently screen the garage. Therefore, the Planning Board recommends

approval of the site plan by Boston Survey, Inc., dated 6/13/13 and of the floor plans and elevations by Arcadia Design Studio, dated 6/14/13, subject to the following conditions:

1. Prior to issuance of a building permit, final elevations of the garage shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall submit a final site plan and final landscaping plan, indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and building 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.

Zoning Board of Appeals Chairman Jesse Geller next called upon Assistant Director of Planning Polly Selkoe, to deliver the comments of the Building Department on behalf of the Chief Building Inspector Michael Yanovitch. Assistant Director Selkoe stated that the Building Department has no objection to this proposal.

In deliberation, Zoning Board of Appeals Member Mark Zuroff commented on the condition of a fencing plan. Assistant Director of Planning Selkoe stated that the condition should be included in the second condition following the requirement of a final landscaping plan. Zoning Board of Appeals Member Zuroff stated that he is in support of the grant of special permit relief. Board Member Johanna Schneider concurred with Mr. Zuroff's statement about the fencing plan and commented that permeable pavers should also be addressed in the conditions. Chairman Geller stated that the proposal is attractively designed and worthy of relief subject to the conditions, as read into the record and as modified by Assistant Director Selkoe.

The Board then determined, by unanimous vote that the requirements for special permit relief from the requirements of **Section 5.72**, **6.04.5.c.3**, and **Section 8.02.2** of the Zoning By-

Law as requested pursuant to **Sections 5.43, 6.04.12 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

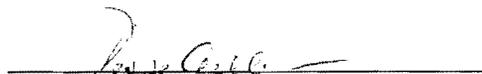
proposed use.

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 of the garage shall be submitted to the Assistant Director of Regulatory Planning for review and approval.**
- 2. Prior to the issuance of a building permit, the applicant shall submit a final site plan and final landscaping/fencing plan, including permeable pavers, indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans and building 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

Filing Date: October 7, 2013

  
Jesse Geller, Chairman

A True Copy  
ATTEST:

RECEIVED  
TOWNSHIP CLERK  
BROOKLYN  
2013 OCT 7 P 2:20

A handwritten signature in black ink, appearing to read "Patrick J. Ward". The signature is stylized with a large initial "P" and a circular flourish at the end.

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Patrick J. Ward  
Clerk, Board of Appeals