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TOWN OF BROOKLINE

Town of Brookline Massachusetts

BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Christopher Hussey

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2012-0027

Petitioner Raj and Neena Dhanda applied to the Building Commissioner for permission to construct a two car garage at the rear of his property at 67 Powell Street and infill the existing garage and carriage house at 65 Powell Street. The application was denied and an appeal was taken to this Board.

On April 12, 2012, 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 June 7, 2012 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 his 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 May 17 and 24, 2012, 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: **DHANDA TRS RAJ K & NEENA**
Owner: **DHANDA TRS RAJ K & NEENA**
Location of Premises: **67 POWELL ST**
Date of Hearing: **Thursday June 7, 2012**
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. 5.43; Exceptions to Yard and Setback Regulations, special permit required.
2. 5.60; Side Yard requirements, variance required.
- 3.. 5.72; Accessory Buildings or Structures in Rear Yards, variance required.
4. 6.04.12; Design of All Off-Street Parking Facilities, special permit required.
5. 8.02.2; Alteration or Extension(Structure), special permit required.
6. Such other relief as the Board of Appeals may deem appropriate or required.

of the Zoning By-Law to construct additions on the northwest and southeast sides of your home.

Said premise located in a SC-7 (**Single-family and converted for two-family**) residential 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.***

**Enid Starr
Jesse Geller
Christopher Hussey**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr, Board Members, Jonathan Book and Mark Zuroff. Kenneth Hoffman, Attorney of Holland and Knight 10 Saint James Avenue, Boston, presented the case for the petitioners.

Attorney Hoffman described the property as three lots in the same ownership. The middle lot has the main house on it; the lot to the south, a carriage house with space for two cars and living space on the 1st and 2nd floors; and on the lot on the north, a swimming pool and at a lower level, a garden area. Building Department records show the carriage house has been used as a dwelling unit since at least the 1960s. The property is located at the corner of Freeman and Powell Streets and is in the Cottage Farm Local Historic District. Amory Park and Hall's Pond Sanctuary are nearby.

Attorney Hoffman said the petitioner is proposing to build a two-car garage for parking cars and to make the parking in the existing carriage house living space. Mr. Hoffman said the existing carriage house is non-conforming due to the fact it is occupied. He said the property is in an historic district and the Preservation Commission has approved and supports the proposal. Mr. Hoffman said the proposal also has the support of the Planning Board. He said the relief needed is for the rear yard setback. He said the proposed structure is up against a high stucco wall. He went on to say the project has drawn the attention of some of the neighbors and he would like to reserve the right to speak after the neighbors exercise their right to speak. Mr. Hoffman said the proposed setback is 6 inches. He said the larger, as of right setback would not be of any benefit due to the small area between the proposed structure and the stucco wall not being of any use

once the structure is in place. He said if the structure were to be moved away from the wall the area between the proposed garage and the wall would be difficult to maintain.

Architect Peter Quinn, whose business address is 1904 Massachusetts Avenue, Cambridge, presented the architectural renderings of the proposal. Chairman Starr asked what was currently in the spot where the garage is proposed. Mr. Quinn said there is a concrete slab. Board Member Zuroff asked how high above the wall the proposed garage would be. Mr. Quinn said the wall is approximately 6 feet 6 inches in height. He said the proposed carriage house is fifteen feet to the ridge. Board Member Zuroff asked if any thought was given to locating the proposed garage on another spot upon the lot. The architect said it was located in the proposed spot in order to preserve the unimproved portions of the lot. Member Zuroff asked if he was correct in saying that a portion of the proposed structure will be used for a pool house. Mr. Quinn said that there would be a bathroom within the proposed structure. Chairman Starr asked if the proposed work to the existing carriage house would be all interior work. Mr. Quinn said there would be some exterior improvements as well as infilling the existing garage doors.

The Chairman asked whether anyone in attendance wished to speak in favor of the proposal. No one rose to speak. The Chairman asked if anyone would like to speak in opposition. Kate Silbaugh of 68 Amory Street rose to speak. Ms. Silbaugh said she is the direct abutter to the rear. She submitted 2 documents that the chairmen entered into the record as exhibits 1 and 2. Ms. Silbaugh said she was before the Board a couple of years ago where the potential complainant was Mr. Dhana and he did not object to their project. She said Attorney Hoffman was the Attorney that represented them in that case. Ms. Silbaugh said she was before the Board

for an FAR issue and was represented by counsel because Mr. Dhana could have opposed their proposal, but he did not. She said she wanted to make the Zoning Board aware that she, as well as the abutters at 64 Amory and 74 Amory Street, did not receive notice of the Preservation Commission hearing or the Planning Board hearing. Ms. Silbaugh said she is opposing the application because the proposal is a significant and burdensome, and unreasonable and entirely unnecessary proposal. She said the proposal will affect the re-sale value of her house. She said her family has lived in the house for twelve years and the Dhanda's have been great neighbors. Ms. Silbaugh said she and the other abutters are still hopeful that the Board could see and understand their opposition.

Richard Kraus of 64 Amory Street rose to speak. Mr. Kraus said he totally supports Mr. Dhanda's proposal but he opposes the town's process. He said he would agree to whatever came from the dialogue between the Dhanda's and the Silbaugh's.

Mr. James Franco rose to speak regarding the process of the Board granting variances and special permits.

Kenneth Hoffman rose to speak in rebuttal. He said the relief that is required is under section 6.04.12 Of the Town of Brookline Zoning By-Law. Mr. Hoffman read from the decision of the Board for case number 070061 , 68 Amory Street, which is the Silbaugh's property. He said the Silbaugh's received a special permit for a zero side yard setback, where the setback was 5 feet, as well as a variance for Floor Area Ratio. Attorney Hoffman said the argument the Silbaugh's have put forth is not an argument that is valid according to the Zoning By-Law. Mr. Hoffman

presented a graphic that illustrated the sightlines from the Silbaugh's property. Architect Peter Quinn explained the graphics to the Board. Attorney Hoffman recommended the Board conduct a site visit prior to making a decision. Chairman Starr said she does not see the need for a site visit but it is within the petitioner's rights to ask for a continuance and request a site visit. Attorney Hoffman said his point in asking for a view is so the Board can see the sightlines for themselves.

Kate Silbaugh rose to speak and said she would still like to have her say in front of the Planning Board. Chairman Starr said she reads the Planning Board reports and does not necessarily make the decision based on the Planning Boards report. Courtney Synowiec, Planner, said the same software for notification is used by all departments required to notify abutters of hearings. Chairman Starr said the law is clear regarding notification of ZBA hearings. The Chairman said Ms. Silbaugh has had her opportunity to state her opposition and the Board has taken it into account. Courtney Synowiec suggested July 19, 2012 for the continued hearing.

The site visit at 65-67 Powell Street took place on July 17, 2012.

July 19, 2012 67 Powell Street hearing continued from June 7, 2012:

Chairman Starr said all testimony is closed aside from the comments of the Planning Board and the Building Department.

The Chairman called upon Lara Curtis Hayes, Planner, to deliver the comments of the Planning Board.

FINDINGS

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

Section 5.72 – Accessory Buildings or Structures in Rear Yards

Section 6.04.12 – Design of All Off-Street Parking Facilities

Dimensional Requirements	Required	Existing	Proposed	Relief
Side Yard Setback (carriage house)	7.5'	4.6'	4.6'	Pre-existing,
Rear Yard Setback	30'	3.6'	3.6'	Pre-existing,
Rear Yard Setback (new garage)	6'	n/a	1'6"	Var./Sp. Permit*

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

* Under **Section 6.04.12**, the Board of Appeals may waive dimensional requirements for driveway and parking areas where provided to meet the off-street parking requirements.

Section 8.02.1 – Alteration or Extension: A non-conforming use shall require a special permit to be altered, reconstructed or enlarged. The separate dwelling unit in the carriage house is a pre-existing non-conforming use whose floor area is being increased with this proposal.

Section 8.02.2 – Alteration or Extension

Ms. Hayes said the Planning Board does not oppose the construction of a new garage and believes it will have only a minimal impact on the two rear abutters, because it will be partially screened by the existing high garden wall and have an attractive glazed clay tile roof. However, the Board is concerned that the current design of the garage will be difficult to build without having the roof overhang the property line. In order to avoid this, the Board encourages the applicant to consider moving the garage away from the wall an additional 18 inches. The applicant has had the design of the new garage and the proposed carriage house renovations approved by the Preservation Commission because the property is in a local historic district. The new terrace and landscaped area and renovations to the carriage house, which is in need of repair, will serve as counterbalancing amenities.

Therefore, the Planning Board recommends approval of the proposed plans by Peter Quinn Architects, last dated 3/8/2012, subject to the following conditions.

1. Prior to the issuance of a building permit, final plans and elevations indicating dimensions and materials shall be submitted subject to the review and approval of the Preservation Commission Staff and the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscape

plan 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 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.

The Chairman then called upon Michael Yanovitch, Chief Building Inspector, for the comments of the Building Department. Mr. Yanovitch said that the Building Department does not oppose the request for relief and agrees with the Planning Board's recommendations. Mr. Yanovitch said he thinks there is room to move the structure at 1 foot 11 inches from the proposed location and still comply with the required 6 foot setback from the principal structure.

Board Member Zuroff asked Mr. Yanovitch is if the structure was moved in from the wall, could the structure be built so the structure did not overhang the wall. Mr. Yanovitch said yes, it could be, but the intent was to match the existing structure. He said the overhang could possibly be scaled back so as not to overhang the wall. Chairman Starr said asked if the proposed structure were to be moved closer to the principal structure and complied with the rear yard setback, would we need to grant relief for the separation of the house and the proposed garage? Mr. Yanovitch said, yes that zoning relief would be necessary because under section 5.72 accessory structures shall be no closer than 6 feet to the principal structure.

During deliberation Board Member Book said he would not be in favor of granting relief as proposed and he believes that there are other suitable locations for the structure. He would be agreeable if the structure were moved closer to the principal structure and complied with the rear yard setback. Board Member Zuroff said the building of the structure inside the wall is not terrible. He said he does not disagree with Board Member Book and believes the structure can be moved away from the wall and would be less offensive to the neighbors. Chairman Starr said she agrees with the other Members and believes the proposal does not comply with section 9.05 in regards to detriment to abutters. She said she would be inclined to grant the special permit should the petitioner want to move it closer to the house. Attorney Hoffman said his client is ok with an approval based on the structure being moved to comply with the required rear yard setback for accessory structures. Chairman Starr said as she understands it the petitioner is agreeable to complying with the rear yard setback by placing the garage at 6 feet from the property line. She said in doing would we need to grant relief for the separation proposed structure and the principal structure, which the Board would grant.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits pursuant to Sections 5.72, 5.43 and 8.02.2. The Board also made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

- 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 the issuance of a building permit, final plans and elevations indicating dimensions and materials shall be submitted subject to the review and approval of the Preservation Commission Staff and the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan 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 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.

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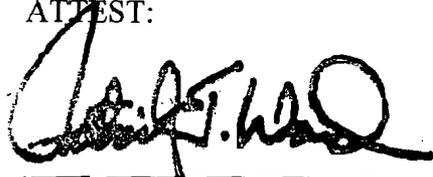
Unanimous Decision of
The Board of Appeals



Enid Starr, Chairman

Filing Date: August 24, 2012

A True Copy
ATTEST:

A handwritten signature in black ink, appearing to read "Patrick J. Ward", written over a horizontal line.

Patrick J. Ward
Clerk, Board of Appeals