



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

RECEIVED
Town of Brookline
Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2012-0068

Petitioner, Roberto Arista, applied to the Building Commissioner for permission to construct a two-car garage within the front yard setback at 62 Atherton Rd. The application was denied and an appeal was taken to this Board.

On December 6, 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 January 17, 2012 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 (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 January 3, 2013 and January 10, 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: Roberto Arista

Owner: **Roberto Arista, Leslie Arista**
Location of Premises: **62 Atherton Road**
Date of Hearing: **January 17, 2013**
Time of Hearing: **7:00 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. **5.01- Table of Dimensional Requirements, Footnote 1**
2. **5.43 – Exceptions to Yard and Setback Regulations**
3. **5.50 – Front Yard Requirements**
4. **5.53 – Accessory Buildings in Front Yard**
5. **5.54 – Exceptions for Existing Alignment:**
6. **6.04.12 – Design of All Off-Street Parking Facilities**
7. **8.02.2; Alteration or Extension (Structure), special permit required.**

of the Zoning By-Law to construct a parking area **to construct a two-car garage within the front yard setback.**

Said premise located in a **T-5 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.

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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 Jonathon Book. The case was presented by the attorney for the petitioner, Adam R. Barnosky, Law Office of Robert L. Allen, Jr.

LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance were Roberto Arista and Leslie Arista, the owners of 62 Atherton Road.

Chairman Geller called the hearing to order at 7:00 p.m. Attorney Barnosky stated that the structure at 62 Atherton Road is a two-family dwelling, located to the north of the Summit Avenue T stop and Coolidge Corner. It was built in 1900 and is located in a T-5 Zoning District. Surrounding properties are primarily two-family dwellings that are similar in overall bulk. Properties on the southwest side of Atherton Road, where the home at issue is located, are significantly higher than the properties to the northeast. The dwelling is located on a portion of the property that is 9'-10' higher than the front property line, the property slopes up from the road to the dwelling at a slope of 42 degrees.

The petitioner, Roberto Arista, is proposing to construct a two-car garage within the front yard setback of the property. The accessory structure will be twenty (20) feet wide and will be situated on the front property line, with two garage doors on the front. Two staircases will be constructed on each side of the garage, and will be used to access the dwelling. The plans include a roof deck to be constructed above the proposed garage with a fence around the deck area. The deck will be accessed by a walkway from the stairs to the left of the garage.

Attorney Barnosky stated that there are several properties in the neighborhood where parking areas or structures are located in the front yard setback, including both immediate abutters to the north and south of 62 Atherton Road. Mr. Barnosky noted that the Planning Board met last month and unanimously supported the applicant's proposal, noting the attractive design, roof deck adding open space, and harmony of the design with other properties in the neighborhood. There has been no opposition or objections to this proposal. Two letters in support of the proposal were supplied to the Chairman and entered as exhibits.

Mr. Barnosky noted that the applicant was cited under Sections 5.01, 5.50, and 5.53 of the Zoning By-Law with respect to front yard & setback requirements. The Zoning By-Law, he stated, prohibits accessory buildings in front yards and requires that garage entrances facing toward the street to which its driveway has access must be at least twenty feet from the street lot line. He said that the existing setback currently is 23.4 Feet, which will be reduced to 0 feet, as the accessory structure will be on the lot line in the front yard. Mr. Barnosky suggested that under Section 5.43 of the Zoning By-Law, the Board of Appeals by special permit may allow the substitution of other dimensions for yard and setback requirements if counterbalancing amenities are provided. The applicant, as a counterbalancing amenity, is proposing to provide additional landscaping on the premises.

Mr. Barnosky said that the petitioner was also cited under Section 5.91 of the Zoning By-Law regarding Minimum Usable Open Space Noting that the property currently has no usable open space. The proposal will add 288 square feet of open space, and increase it to 6%. This usable space will be the area on top of the structure to be used as a deck, as indicated on the plans.

Regarding relief under Section 6.04.12 of the Zoning By-Law, Design of All Off-Street Parking Facilities, the proposed construction of a two-car garage on the property will create two new parking spaces, where there are currently none.

Attorney Barnosky lastly discussed relief under Section 8.02.2 of the Zoning By-Law where special permit relief is required under Section 9.05 of the Zoning By-Law to alter and/or extend this non-conforming structure. Mr. Barnosky stated that the requested relief under Section 9.05 of the Zoning By-Law was warranted. The specific site is an appropriate location for such use, structure, or condition. There are other properties in the area with similar structures in the same locations and there is no other feasible location on this property to put this structure and its use for the primary purposes of parking is

appropriate. The use as developed will not adversely affect the neighborhood. Other properties will not be impacted by this use. He reiterated that several other properties in the neighborhood have similar parking garages without substantial impact to the area. Conversely, it will be an improvement and will be more visually appealing than an open paved parking area and will conceal the cars from the streetscape. There will be no nuisance or serious hazard to vehicles or pedestrians. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. Finally, the development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

The Chairman asked the petitioner whether any pedestrian safety measures had been implemented for the protection of pedestrians using the adjacent sidewalk. Attorney Barnosky indicated that options had been discussed, but that no formal safety measures had been implemented.

The Chairman asked whether anyone in attendance wished to speak in favor of or against the proposal. No one spoke in favor or in opposition to the proposal.

Tim Richard, Planner for the Town of Brookline, delivered the findings of the Planning Board.

FINDINGS

Section 5.01 – Table of Dimensional Requirements – Footnote 1

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.50 – Front Yard Requirements

Section 5.53 – Accessory Buildings in Front Yards

| | Required | Existing | Proposed | Finding |
|---------------------------|-----------------|-----------------|-----------------|------------------------------|
| Front Yard Setback | 20' | 23.4' | 0' | Special Permit*/ Variance |
| Usable Open Space | 1,119 s.f. | 0 s.f. | 228 s.f. | Special Permit/ Variance |

*Under Section 5.43, the Board of Appeals by special permit may allow the substitution of other dimensions for yard and setback requirements if counterbalancing amenities are provided. The applicant is proposing to provide additional landscaping

Section 5.54 – Exceptions for Existing Alignment: This section is cited in the denial letter, but is not applicable to the property.

Section 5.91 – Minimum Usable Open Space: Total usable open space on the property is currently 0%. The proposal will add 288 square feet of open space, and increase it to 6%.

Section 6.04.12 – Design of All Off-Street Parking Facilities: The proposed construction of a two car garage on the property will create two parking spaces, where there are currently none. This proposal appears to meet the requirement for relief to dimensional requirements under this section.

Section 8.02.2 – Alteration or Extension: A special permit is required to alter and/or extend this non-conforming structure.

Mr. Richard said the Planning Board is not opposed to the proposal to construct a two-car garage in the front yard setback, since access to the backyard is not possible due to this severe slope. The garage and roof deck are attractively designed and will increase the enjoyment of this property. There is a two-car garage situated on the front property line of 66 Atherton Road, the abutting property directly to the

north. The property directly to the south has a parking area within the front yard setback. The Planning Board views this proposal as a reasonable request that will help to create two off street parking spaces and add usable open space. Therefore, the Planning Board feels that granting the relief is appropriate.

Therefore, the Planning Board recommends approval of the proposal and plans, and site plan by Bradford Engineering, dated 10/10/2012, with the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a site plan with the required curb cut, final plans and elevations of the garage, indicating all dimensions and materials subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscape and railing 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 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 Yanovich, Head of the Building Department, to deliver the comments of the Building Department. Mr. Yanovich stated that he had no objections to the proposal

and that the petitioner had been cooperative and a pleasure to work with during the process. Mr. Yanovich stated that this is a well designed structure and that this option is better than open parking on the lot.

The Board, having heard all the testimony, deliberated on the merits of the application. Board Member Book stated he was in favor of granting relief, noting that he had no issues with minimum usable open space. Board Member Zuroff concurred with Mr. Book, stating that he felt the applicant met the requirements for relief, but noted his desire for some pedestrian safety measures. Chairman Geller agreed that based on the testimony provided the petitioner meets the conditions necessary for the requested relief by special permit provided that the conditions include implementation of safety measures.

The Board then determined, by unanimous vote that relief by special permit under Sections 5.43, 6.04.12 and 9.05 of the Zoning By-Law from the requirements of of Sections 5.01 5.50; 5.53; 5.91; and Section 8.02.2 of the Zoning By-Law is appropriate. The Board made the following specific findings pursuant to said 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.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

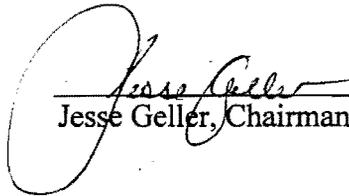
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1. Prior to the issuance of a building permit, the applicant shall submit a final site plan with the required curb cut, final plans and elevations of the garage, indicating all dimensions**

and materials subject to the review and approval of the Assistant Director of Regulatory Planning.

2. Prior to the issuance of a building permit, the applicant shall submit (a) a final landscape and railing plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning; and (b) plans to indicate safety measures for the protection of pedestrians using the adjacent sidewalk, for review and satisfaction of the Building Department.
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.

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
A 8:48
2013 FEB 19
Unanimous Decision of
The Board of Appeals
Filing Date: February 19, 2013



Jesse Geller, Chairman

A True Copy
ATTEST



Patrick J. Ward
Clerk, Board of Appeals