



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

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Town of Brookline
TOWN OF BROOKLINE
MASSACHUSETTS

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2011-0030

Petitioner, Stephen Sutter, applied to the Building Commissioner for permission to construct a new garage for two vehicles with deck above in the front yard of 129 University Road. The application was denied and an appeal was taken to this Board.

On May 26, 2011, 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 30, 2011 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 June 9 and 16, 2011, 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: **SUTTER, STEPHEN**
Owner: **SUTTER, STEPHEN**
Location of Premises: **129 UNIVERSITY ROAD**
Date of Hearing: **June 30, 2011**
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. 5.43; Exceptions to Yard and Setback Regulations, special permit required.**
- 2. 5.52; Fences and Terraces in Front Yards, variance required.**
- 3. 5.53; Accessory Buildings in Front Yards, variance required.**
- 4. 6.04.4.f; Design of All Off-Street Parking Facilities, special permit required.**
- 5. 6.04.5.c.l&2; Design of All Off-Street Parking Facilities, variance required.**
- 6. 6.04.12; Design of All Off-Street Parking Facilities, special permit required.**
- 7. 5.91; Minimum Usable Open Space, variance required.**
- 8. 8.02.2; Alteration or Extension, special permit required.**

Modification, as required, of Board of Appeals Case #050036

of the Zoning By-Law to **CONSTRUCT A GARAGE IN THE FRONT SETBACK REQUIRING BOA RELIEF at 129 UNIVERSITY ROAD.**

Said premise located in a **T-6 (one and two-family)** residence 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, Mark Zuroff and Board Members Christopher Hussey and Lisa Serafin. The case was presented by the petitioner's architect, Mr. Benjamin Ber, of 23 Strathmore Road, Brookline, and his associate, Glenn Knowles, of Glenn Knowles & Associates, 68 Northhampton St., Boston, MA 02118.

To provide background for the case, the Planning Board report gave a brief history related to zoning at the site:

July 7, 2005, Board of Appeals Decision Case #050036 – The Board of Appeals granted the previous owner permission to construct a two-car parking area of two 9'x18' parking spaces in the front yard with a new 20' wide curb cut.

Mr. Ber distributed to the Board an 11 page document including photos, site and landscape plans, floor plans and elevations of the proposed garage and a slope analysis of the site. He said that the home was a two-family set up as condominiums both owned by his client, Mr. Sutter. He said that Mr. Sutter will be returning shortly from the west coast and would like to make the proposed changes to better accommodate the needs of his family.

Mr. Ber described the property at 129 University Road as a two-family house on the upside of University near the intersection of Gardner Road and Washington Street, close to the Washington Square Business District. Built in 1915, the house has two and one half stories, with a large front bay and a stacked front porch system, as well as a large attic dormer. There are two front yard parking spaces. The house has Craftsman architectural influences and is clad in stucco, with a slate roof. The lot is situated at the base of Aspinwall Hill and has a significant slope. The

surrounding properties have similar topographical issues and many have front yard parking areas or grotto garages. Due to the steep incline of the property there is no opportunity for parking anywhere other than the front yard.

Mr. Ber stated that his client, Stephen Sutter, is proposing to enlarge and enclose a new two-car garage with a wood deck above within the front yard setback. The proposed construction would enclose two 9'x18' parking spaces and provide 6' of covered space for a snow blower and like equipment. He said that they would like to provide a 22'x29' roof deck over the garage. New interior steps to provide access from the garage level to the basement would be built, in addition to new connecting steps from the existing porch to the new deck. He said that his clients would be able to enter the garage and access the basement of their home without going outside. The existing exterior steps from the street to the dwelling would be refurbished and clad in stone. Mr. Ber said that a small "man-door" would be provided on the front façade for pedestrian access to the home. He said that the addition was approximately 846sf. He said 126sf of this would be applied to the gross floor area of the home and with the added space it is still less than the allowed gross floor area for the district. The design also includes three brick pavers between the sidewalk and the garage and a new street tree to the west side of the garage structure which would mirror the existing tree to the right of the garage. The proposal also involves a new stone retaining wall next to the new garage. Speaking of counter-balancing amenities, Mr. Ber said that his client is proposing significant landscape improvements as depicted on sheet 4 of the documents provided. He said that his client wishes to plant a new tree probably an American ash in the tree lawn to the West of the curb-cut. He said that they would coordinate with the Town Tree Warden on this issue. He said that the requirement for providing useable open space is

difficult on this lot because of the unusual shape and topography. Mr. Ber said that the Board could consider waiving dimensional requirements under **Section 5.43** of the Zoning By-Law.

Board Member Serafin asked about the width of the curb cut and the overall width of the garage. Mr. Ber responded that the curb cut will not change from the existing 20'. The overall width of the garage is 33', he said.

Chairmen Zuroff asked whether anyone in attendance wished to speak in favor of or against the proposal. No one rose to speak.

Beth Falkof, planner, delivered the findings of the Planning Board.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.52 – Fences and Terraces in Front Yards

Section 5.53 – Accessory Building in Front Yards

Section 6.04.4.f, Section 6.04.5.c.1&2, Section 6.04.12 – Design of All Off-Street Parking Facilities

Pedestrian safety requirements designed to ensure adequate sight lines and the safety of pedestrians, as well as other vehicles, must be met. This parking area is similar to several that exist on this side of University Road due to the topography, and is not likely to cause any issues. Therefore, no additional safety requirements are necessary.

Dimensional Requirements	Required/Allowed	Existing	Proposed	Relief
Front yard setback (garage & deck)	15'	n/a	5'	Special permit/ Variance*

* Under **Section 5.43**, the Board of Appeals may waive by special permit yard setback requirements if counterbalancing amenities are provided. As a counterbalancing amenity, the applicant is planning on providing landscaping, including a street tree and plants on the deck, as well as a new flowering tree next to the new garage.

Section 5.91 – Minimum Usable Open Space

Due to the slope of the property, this is a pre-existing, non-conforming condition.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter this non-conforming structure.

Modification to BOA Decision case #050036: Modification required.

The Board of Appeals granted the previous owner permission to construct a two-car parking area of two 9'x18' parking spaces in the front yard with a new 20' wide curb cut.

Ms. Falkof reported that the Planning Board was supportive of the proposed addition as the enclosed garage would have a positive visual impact on the neighborhood. There is a prevalence of similar parking structures on the block due to the slope of the lots on the uphill side of the street. The garage would shelter two vehicles from view, while providing open space on the deck. The proposed street tree and flowering tree would also enhance the streetscape. Therefore, she said that the Planning Board recommended approval of the "Conceptual Sketches" by Benjamin Ber, Registered Architect, dated March 2011, and the site plan dated February 14, 2011 by Michael Pustizzi of Precision Land Surveying, Registered Land Surveyor, and "Landscape Plan for Garage Addition" by Glenn Knowles and Associates and Leonard Design Associates, dated May 20, 2011, subject to the following conditions:

1. Prior to the issuance of a building permit, final elevations indicating dimensions and materials shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities to the Assistant Director of Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, the applicant shall submit a plan for a new street tree to the Tree Warden for review and approval.
4. 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 Shepard, Building Commissioner, for the report from the Building Department. Mr. Shepard stated construction of the garage would effectively hide two exposed cars in the front yard. That, coupled with the attractive design before the Board, would in his opinion, be

positive for the neighborhood. He said that the Building Department was supportive of the relief requested as well as the conditions proposed by the Planning Board. Mr. Shepard said the Building Department would assure compliance with the building code and insure that the addition was constructed in accordance with the subject plans.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that it was desirable to grant all the relief required by special permit. The Board after finding that adequate counter-balancing amenities were provided granted relief from Sections 5.43 and 8.02.2 of the Town of Brookline Zoning By-Law and modification of Board of Appeals Case #050036 as necessary. The Board also made the following specific findings pursuant to Section 9.05:

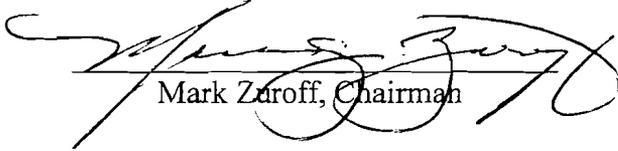
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

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

- 1. Prior to the issuance of a building permit, final elevations indicating dimensions and materials shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2. Prior to issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities to the Assistant Director of Regulatory Planning for review and approval.**
- 3. Prior to issuance of a building permit, the applicant shall submit a plan for a new street tree to the Tree Warden for review and approval.**

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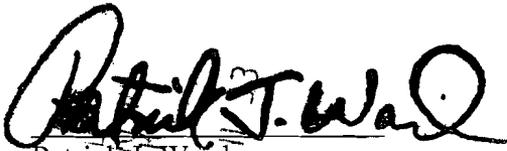
Unanimous Decision of
The Board of Appeals



Mark Zuroff, Chairman

Filing Date: July 8, 2011

A True Copy
ATTEST:



Patrick J. Ward
Clerk Board of Appeals

RECORDED
TOWN OF BURLINGTON
TOWN CLERK
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