



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

RECEIVED
2011 NOV 16
Town of Brookline
Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2011-0032

Petitioner, Michael Minkoff, applied to the Building Commissioner for permission to construct a kitchen addition and a three car garage with patio above at his home at 22 Borland Street. 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 November 3, 2011, at 7:15 p.m. in the Selectmen's conference 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 October 20 and 27, 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: **MINKOFF MICHAEL**
Owner: **MINKOFF MICHAEL**

Location of Premises: **22 BORLAND ST**
Date of Hearing: **November 03, 2011**
Time of Hearing: **7:15 p.m.**
Place of Hearing: **Selectmen's Conference Room, 6th Floor**

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

1. **5.09.j&k; Design Review, Special Permit Required.**
2. **5.22.3.3.b.1; Exceptions to Maximum Gross Floor Area (FAR) Regulations for Residential Units, Variance Required.**
3. **5.22.3.c; Exceptions to Maximum Gross Floor Area (FAR) Regulations for Residential Units, Variance Required.**
4. **5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.**
5. **5.44.2; Accessory Underground Structures, Variance Required.**
6. **5.44.4; Accessory Underground Structures, Special Permit Required.**
7. **5.50; Front Yard Requirements; Variance Required.**
8. **5.70; Rear yard Requirements, Variance Required.**
9. **5.91; Minimum Usable Open Space, Variance Required.**
10. **6.04.12; Design of All Off-Street Parking Facilities, Special Permit Required.**
11. **6.04.14; Design of All Off-Street Parking Facilities, Variance Required.**
12. **6.04.14.b; Design of All Off-Street Parking Facilities, Determination by Building Commissioner Required.**
13. **8.02.2; Alteration or Extension; Special Permit Required.**

of the Zoning By-Law to **construct a kitchen addition and three car garage with patio above at 22 Borland Street.**

Said premise located in a **S-1.0 (single 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.***

**Enid Starr
Jesse Geller**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr and Board Members Jonathan Book and Mark Zuroff. The case was presented by the architect for the petitioner, Gary Hendren of Hendren Associates, 119 Braintree Street, Suite 315, Boston, MA.

Mr. Hendren stated that the proposal has been reduced to a two-car garage after meeting with the neighbors and, in fact, a written agreement has been signed between the neighbors and Mr. Minkoff over these issues. He said that the old garage had been removed in 1989 and a new three-car garage plan had been approved by the Zoning Board of Appeals in 1990 but had never been built and the relief subsequently expired. Mr. Hendren said that the impetus for this construction was to prevent Mrs. Minkoff from having to climb the stairs from the parking area in the elements with her two infant children.

Mr. Hendren displayed plans for the kitchen extension; reviewed cross-sections of the house and the garage and showed the grade changes at the rear of the property. He stated that they are planting arbor vitae trees and screening the proposed patio area. He said the relief being sought is a variance under **Section 5.22** because the existing house exceeds the FAR and that the petitioners are also requesting an increase of 160 square feet of relief. Mr. Hendren also stated that they need a special permit under **Section 802.1.b** because they are altering an existing non-conforming structure. Mr. said that the site is narrow with significant grade changes. He noted that the hardship is the real need for Mrs. Minkoff to enter the house from the inside without her having to trudge up the exterior stairs in the snow.

Zoning Board of Appeals Member, Mark Zuroff, asked if the other houses in the neighborhood have the same topography. Mr. Hendren replied that they do not, the other lots are all flat and their garages are not underground.

Zoning Board of Appeals Member, Jonathan Book, asked if the variance that is being sought for FAR is because the kitchen is being made larger. Mr. Hendren stated that it is a combination of the connector from the garage and the kitchen addition. Mr. Book stated that he had not heard why not expanding the kitchen is a hardship and he believes that to be a significant issue. Mr. Hendren stated the kitchen itself is going on the top of the foundation for the garage. He noted that the site is too narrow for a building this size.

Zoning Board of Appeals Chair, Enid Starr, stated that to alleviate the issue of FAR is to not have any structure on the top of the garage. Mr. Hendren stated that you would still have an FAR issue of 80 feet because of the connector from the garage to the house.

The Board discussed at great length whether the petitioner was eligible to apply for a special permit instead of a variance. After much conversation, it was determined that they were over the percentage needed for a special permit and that the connector would require additional FAR relief in the form of a variance.

Mr. Hendren again noted that the main purpose of the proposal was the connector – the ability to get the infant twins in and out of the car without exposing them to the stairs and the elements.

Chairman Starr noted that there are three prongs to establishing a variance. She stated that she believed the petitioners meet the first prong – the topography and shape of the land; and that they can meet the third prong – which is not a detriment to the neighborhood; and that leaves the Board with how to define hardship – financial or otherwise. Mr. Hendren stated that he believed it is a safety issue. Zoning Board of Appeals Member Jonathan Book stated that safety may justify the connector but he still has an issue with the kitchen; that he just doesn't see the nexus of the shape and topography and the need for an expanded kitchen.

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

Courtney Synowiec, Planner, stated the Planning Board reviewed this case twice and the applicant and Mr. Hendren have worked extremely hard with the neighbors to come up with something that is acceptable. She noted that the Planning Board had requested that the garage be reduced from three cars to two and had asked the petitioner to return after the property issues with the neighbors had been worked out. Overall, she noted, that the Planning Board felt that many of the issues were private issues and inappropriate to be incorporated into any recommended conditions. Although she noted that wherever possible, the Planning Board would support incorporating any necessary issues into the construction management plan. Ms. Synowiec stated that the Planning Board was supportive of the garage addition and the kitchen addition. She also noted that the remaining issue was the lattice which the applicant has addressed to the Planning Board's satisfaction. Therefore, should the Board of Appeals find the applicant meets the grounds for a variance, the Planning Board recommended approval of the elevations prepared by Hendren Associates, dated 9/19/11 subject to the following conditions:

1. Prior to issuance of a building permit, final elevations and floor plans shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, a final landscaping plan indicating all plantings and fencing details and materials shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to the issuance of a building permit, the applicant shall submit a construction management plan incorporating the conditions of the [attached] private agreement between the Hawes Place residents, dated 10/20/11, to the extent possible subject to the review and approval of the Building Commissioner.
4. 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 engineer or land surveyor; 2) final floor plans and elevations, stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard stated that getting the cars into a garage was a positive thing for the neighborhood. While he could not speak to the variance issue, he stated that both the house addition and garage appeared well designed and that the Building Department was supportive of the proposal.

Mr. Hendren noted that the current kitchen is a galley kitchen and the owners would suffer financially on the resale of the property because of it.

Chairman Starr asked if the neighboring homes are on larger lots. Mr. Hendren stated that four out of the five neighbors are on larger lots.

Board Member Zuroff stated that the Board could justify the connector but he had a hard time justifying the kitchen addition.

Board Member Book stated that the Board requires all three prongs of the test for a variance and the critical prong is missing.

Chairman Starr stated that the Board could continue the hearing if the petitioner so wished in order for them to come back with an alternative design. Mr. Hendren responded that he knows that his clients would prefer to have this garage built before winter since the infants just came home from the hospital. Mr. Hendren requested modifying the petition to remove the kitchen addition in its entirety in order to better fit his client's needs.

Chairman Starr noted that the Board had no objections to modifying the petitioner's request but that they do need to address the rear yard setback relief and whether there were appropriate counter-balancing amenities. Mr. Hendren stated that there is extensive new landscaping being offered as counter-balancing amenities.

Zoning Board of Appeals Member Mark Zuroff stated that he wanted it made clear that the Board is allowing the garage and granting the variance for the connector. Chair Starr stated that was correct.

Chairman Starr stated that the Board has unanimously granted the relief, by way of special permit, for the rear yard setback under **Section 5.43** and alteration of a pre-existing, non-conforming structure under **Section 8.02.1.b** having found that all of the conditions for granting special permit under Section 9.05 were satisfied. As to the variances, the Chairman stated that she understands that the applicant has withdrawn without prejudice the request for the kitchen addition and the Board has found that the criteria for the granting of a variance for the garage connector had been met. The Board had found, for the garage connector only, that the shape of the lot and the topography of the lot support the granting of the variance and that a literal enforcement of the provisions would involve a substantial hardship if relief were not granted. She added that the relief for the connector may be granted without substantial detriment to the public good. Chairman Starr noted that the special permit and the limited variance that the Board has granted are subject to the conditions recommended by the Planning Board. Chair Starr stated that the Board's decision does not prejudice the petitioner from coming back before the Board should he choose to seek relief for the kitchen addition at a later date.

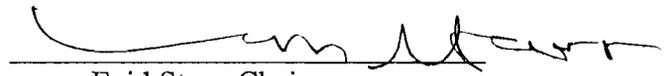
The Board also made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

- 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 as it relates to the garage and connector only subject to the following conditions:

1. Prior to issuance of a building permit, final elevations and floor plans shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to issuance of a building permit, a final landscaping plan indicating all plantings and fencing details and materials shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to the issuance of a building permit, the applicant shall submit a construction management plan incorporating the conditions of the [attached] private agreement between the Hawes Place residents, dated 10/20/11, to the extent possible subject to the review and approval of the Building Commissioner.
4. 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 engineer or land surveyor; 2) final floor plans and elevations, stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals


Enid Starr, Chairman

Filing Date: November 16, 2011

A True Copy
ATTEST



Patrick J. Ward
Clerk, Board of Appeals

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