



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

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Town of Brookline
Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2011-0059

Petitioner, Trustees of Gregory Piatetsky and Marina Medvedev, applied to the Building Commissioner for permission to construct, a single car garage in the front yard of their property at 22 Atherton Road. The application was denied and an appeal was taken to this Board.

On November 3, 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 December 8, 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 November 17 and 24, 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: **TRUSTEES OF PIATETSKY S GREGORY & MEDVEDEV K MARINA**
Owner: **TRUSTEES OF PIATETSKY S GREGORY & MEDVEDEV K MARINA**

Location of Premises: **22 ATHERTON RD**
Date of Hearing: **December 8, 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. 5.53; Accessory Buildings in Front Yards, variance required.**
- 3. 6.04.4.f; Design of All Off-Street Parking Facilities, special permit required.**
- 4. 6.04.5.c.1&2; Design of All Off-Street Parking Facilities, variance required.**
- 5. 6.04.12; Design of All Off-Street Parking Facilities, special permit required.**
- 6. 8.02.2; Alteration or Extension, special permit required.**

of the Zoning By-Law to construct a garage with associated accoutrements in the front yard at **22 ATHERTON RD.**

Said premise located in a **T-5 (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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Robert De Vries**

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, Jonathan Book and Christopher Hussey. The case was presented by the architect for the petitioner, Mr. Phillip Kramer of 84 Davis Avenue, Brookline, MA. The owners, Mr. Piatetsky and Ms. Medvedev were also present.

Mr. Kramer described the site and neighborhood of 22 Atherton Road as a 2½ story shingle style duplex. The home was built in 1900. Located near the intersection of Atherton Road and Summit Avenue near Coolidge Corner, it is located on the “high side” of the street. The front yard has a significant slope and has terraced landscaping. The home is accessed by a steep front stair and there is an existing single car garage built into the grade in front of the house on the northern side of the property. There is resident permit parking on the opposite side of the street, and no parking allowed on the 22 Atherton side.

Mr. Kramer said that his clients are proposing to construct a second single car garage recessed into the grade in the front yard. The new garage will be located on the inside of the existing stairway in the terraced landscaping and will be 27’ away from the existing garage. The existing stairway will be replaced with a new stairway. The existing garage is constructed of concrete and is 10’6” high and measures 10’ x 20’ and does not currently have a door. The new garage will be slightly larger to accommodate one vehicle as well as storage for refuse and recycling containers. The garage will be constructed of concrete and will be 11’6’ high and will measure 13’ x 20’. He said that his clients are proposing to install matching new doors on both garages. The existing curb cut is 10’10” wide and the proposed new curb cut will measure 9’2” wide for a total curb cut width of 20’. Alternatively, the existing curb cut may be reduced to 10’-0” and the new one built at 10’-0”. Either way, the total curb cut will not exceed 20’-0”, and will be subject to the review and approval of the Assistant Director of Regulatory Planning. The curb cuts will not be collocated.

Mr. Kramer said that he and his clients are before the Board seeking relief for construction of the garage in the front yard and parking in the front yard set-back. He said that his clients are proposing counterbalancing amenities as required for relief under **Section 5.43** of the By-Law. These amenities would include the installation of a matching garage door on the existing garage, improved plantings on

the terraces, new plantings on the neighbor’s side of both garages, and additional plantings on top of the new garage. Mr. Kramer also said that his clients are proposing to provide mirrors on both sides of the garage to give the driver a clear sightline of the sidewalk in both directions and install a raised dot sidewalk texture at both sides of the garage to alert pedestrians to the presence of the garage. He said these measures will be installed on the existing garage as well.

Board Member Hussey inquired as to whether the petitioners considered a wider garage. Mr. Kramer responded that they had but decided on a smaller scale so as not to draw attention from the architectural integrity of the home. Board Member Book asked whether the petitioner had considered the recommendation from the Planning Board regarding matching the rooflines of both garages. Mr. Kramer responded that they had and his clients intend to incorporate the recommendations.

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

Courtney Synowiec, planner, provided the findings of the Planning Board.

Section 5.53 – Accessory Buildings in Front Yard Setback

No accessory buildings shall be built within the front yard setback. Under Section 5.43, the Board of Appeals may waive yard and setback requirements by *special permit* if the applicant provides counterbalancing amenities. Should the Board of Appeals find that Section 5.43 is applicable to Section 5.53, the applicant is proposing to provide new landscaping in the front yard terraces as well as vehicular safety devices as counterbalancing amenities (see memorandum attached to the Planning Board Report and incorporated herein by reference).

Section 6.04 – Design of Off-Street Parking Facilities

Section 6.04.4.f – Pedestrian safety requirements designed to ensure adequate sight lines and the safety of pedestrians, as well as other vehicles, must be met. Although the spaces are not collocated and the garage doors are set at the sidewalk line, there are no plantings or topographical obstructions to block the sight lines on either side of the garages. Although garages are somewhat atypical to Atherton Road, parking areas with three or more spaces are common to the neighborhood.

Section 6.04.5.c.1&2 – Front and Side Yard Setbacks for Parking

Dimensional Requirements	Required	Existing	Proposed	Relief
Front Yard Setback	15'	n/a	0'	Special Permit*

Side Yard Setback	5'	n/a	5'9"	Complies
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*Under Section 6.04.12, the Board of Appeals may waive, by special permit, dimensional requirements for parking facilities to serve existing structures or uses.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming structure or use.

Ms. Synowiec reported that the Planning Board was sympathetic to this proposal and the applicant’s desire to have two parking spaces to serve a fairly substantial two-family structure. The existing garage is undersized for modern vehicles and also does not contain sufficient area to store the refuse and recycling bins, thereby requiring the bins to be stored at the top of the steep stairs next to the home and carried down to street level for pickup. Although the Planning Board generally prefers parking spaces to be collocated, they felt the “book ended” garages were more appropriate for this property and would have a more harmonious appearance with the streetscape. To further encourage harmony with the streetscape, the Planning Board would like the applicant to move the proposed planter atop the new garage to be closer to the edge of the garage so that it will be more visible to the street as well as consider climbing vines on the new garage to help it blend into the landscape. The Planning Board would also like a matching planter to be installed atop the existing garage if the structure can bear the load. Finally, the Planning Board would like the applicant to consider redesigning the roofline of the proposed garage so that it is flat (without the pediment) so the new garage will match the old garage more closely and have a consistent appearance. Therefore, the Planning Board recommended approval of the plans by Phil Kramer, dated 11/22/11, subject to the following conditions:

1. Prior to the issuance of a building permit, final plans and elevations for the garage indicating all salient dimensions and materials shall be submitted 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 site plan indicating the locations of any new plantings, planters atop both garages (if structurally feasible), curb cuts and safety devices 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 Shepard, Building Commissioner, for the report from the Building Department. Mr. Shepard reported that the Building Department is supportive of the proposal.. He said that the construction of the garage would remove another vehicle from the street. Mr. Shepard reported that due to the topography of the site, another location for the garage is impractical. He said that the Architect has provided a design that will not detract from the existing home and they have included safety measures to help protect passersby.

During deliberations, Board Members Book and Hussey stated that they were satisfied that the proposal satisfied the requirements for relief and they would support the grant of the requested relief. Chairman Geller while also in support stated that he had fundamental issues with garages in the front yard and it could not help but detract from the original architecture of the home. All Board Members recognized that similar accommodations have been made along this section of the road.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that it was desirable to grant special permit relief from **Section 5.43**, **6.04.12** and **8.02.2** of the Town of Brookline Zoning By-Law. 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 for the garage indicating all salient dimensions and materials shall be submitted 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 site plan indicating the locations of any new plantings, planters atop both garages (if structurally feasible), curb cuts and safety devices 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.**

Unanimous Decision of
The Board of Appeals

Filing Date: January 09, 2012



Jesse Geller, Chairman

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals