



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

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 090010

Petitioner, Summera Realty Trust, applied to the Building Commissioner for permission to add four additional garage spaces for a total of eight spaces to the new home currently under construction at 40 Cottage Street. The application was denied and an appeal was taken to this Board.

On 19 March 2009, 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 30 April 2009, at 7:00 p.m. in the Selectmen's Hearing room, Town Hall, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to the attorney 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 9 and 16 April 2009 in the Brookline Tab, a newspaper published in Brookline. 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: **SUMMERA REALTY TRUST**

Location of Premises: **40 COTTAGE ST BRKL**

Date of Hearing: **04/30/2009**

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:

4.07, Table of Use Regulations, Use #55, parking for more than four non-commercial vehicles; Special Permit Required of the Zoning By-Law to add four garage spaces to the home currently under construction at 40 Cottage Street, for a total of eight indoor spaces.

Said Premise located in a S-40 (single family) 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, Jonathan E. Book, and Board Members Kathryn R. Ham and Robert DeVries. The petitioner, Summera Realty Trust, was represented by its Attorney, Kenneth B. Hoffman of Holland & Knight LLP, as well as Landscape Architect, Joseph T. Geller of Stantec Inc.

40 Cottage Street is a combination of four lots in the Sargent Estates area of Brookline. The property as a whole has frontage on both Cottage Street and Sargent Road. Two single-family dwellings previously located on the property were demolished in summer 2008. The foundation for a new single-family dwelling is currently under construction. Vehicular access to this dwelling is provided from two driveways: one leading from Cottage Street and another from Sargent Road. A significant portion of the property, that closest to Sargent Pond, has been placed under a state approved conservation restriction for the benefit of the Brookline Conservation Commission.

The applicant, Summera Realty Trust, proposes to construct four additional garage bays in storage space below the garage currently under construction for a total of eight bays. Currently, four bays have been permitted at grade. The garage is located on the north side of the new dwelling and consists of two levels, four vehicle bays on each level. The topography of the property rises from Sargent Road towards Cottage Street. This change in elevation allows for both the lower and upper levels of the garage to be accessed by the same driveway. The driveway from Sargent Road leads to a courtyard and the lower level garage; the driveway then continues around the garage and allows access to a separate courtyard and the upper level garage bays. This upper courtyard also connects to a separate courtyard that is accessed by a driveway from Cottage Street. The upper level of the garage is located on the same floor as the dwelling's main (first) floor. The lower level would be located at the basement level.

The garage is located approximately 86 feet 10 inches away from the side property line. Habitable floor area for the dwelling is located above the garages. The exterior of the garage is finished in materials similar to the rest of the dwelling.

The proposed garage would provide parking for up to eight motor vehicles. A special permit under Section 4.07, Table of Use Regulations, Use #55, is required for a private garage or parking area for more than four non-commercial motor vehicles on a residential lot with at least 10,000 s.f.

Attorney Hoffman stated the property consisted of four subdivided lots with two very large single family dwellings on two of the lots. Those dwellings provided for parking six cars. He noted therefore that as a practical matter, this request seeks only to add two new garage spaces on the combined lots. The property is heavily landscaped and the garages cannot be seen from the street. Given the size of the house under construction, an eight car garage is not out of character.

Mr. Geller then reviewed elevations and site plans with the Board, illustrating the landscaping and screening being provided by the applicant.

The Board then asked Lara Curtis from the Planning Department to present the Planning Board's comments on the proposal. She gave the following report from the Planning Board:

The Planning Board is not opposed to this proposal for an eight-car parking garage. The garage complies with setback and FAR requirements, and it is designed to be in character with and appear as a part of the main house. Due to the size of the single-family dwelling under construction and the size of the property, an eight-car garage appropriately designed is a reasonable amenity and will not detract from the property or negatively affect neighboring properties.

Upon examination, the Board noticed that the provided plans do not accurately include the lower level garage space in the property's FAR calculations; to ensure clear accurate plans of the garage are kept on file, the applicant should re-calculate the FAR for the property, considering the eight-car garage area, and indicate the revised FAR on the plans.

Therefore, the Planning Board recommends approval of the proposal and the submitted plans, titled Summera Residence, prepared by Shope Reno Wharton Architecture, and dated January 11, 2008, subject to the following conditions:

1. Only non-commercial vehicles shall be parked in the garage.

2. Prior to the issuance of a building permit, the applicant shall submit a revised zoning analysis, indicating the appropriate inclusion of the garage parking spaces in the FAR calculation, to the Building Commissioner, with a copy forwarded to the Planning Department.
3. Prior to issuance of an amended building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; and 2) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

The Building Commissioner was then asked for his recommendations. Mr. Shepard spoke highly of the degree of cooperation and diligence the applicant and the applicant's contractors have shown the Building Department and other departments of the Town. He reviewed the height calculations at the request of one of the Board members. He also indicated that the applicant will need a license for gasoline storage. The license is granted by the Board of Selectmen on application through the Fire Department. Mr. Shepard did not see a problem with that occurring at the time that an Occupancy Permit was sought. Mr. Shepard also indicated that the applicant has complied with Condition No. 2 above suggested by the Planning Board. Mr. Shepard distributed a copy of the revised calculations prepared by the applicant and indicated that the condition suggested by the Planning Board regarding the recalculation of the FAR has been satisfied and may be deleted.

No other persons spoke in favor or in opposition to the application.

The Chairman inquired as to whether the four lots are in common ownership and, therefore, had been merged for zoning purposes, and Attorney Hoffman replied in the affirmative. After discussion and deliberation by the Board, the Board determined that based upon the submissions by the applicant of the site plan and the elevations, the specific site is an appropriate location for an additional four car garage under the existing four car garage. The incorporation of an four garage bays on the property will not adversely affect the neighborhood,

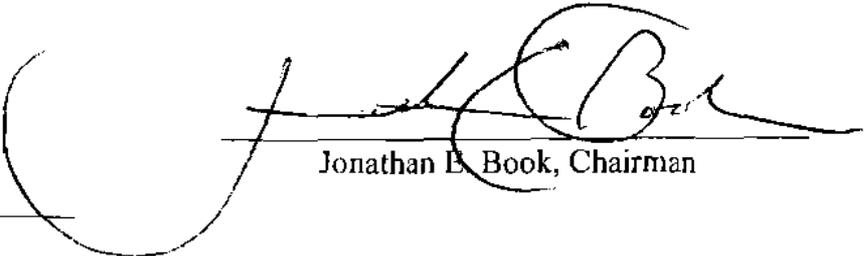
particularly given the nature of the screening and the topography which lends itself to creation of two separate levels for the garage. The garage will be constructed according to the Building Code and will require a license for gasoline storage from the Board of Selectmen. The Board determined that no nuisance or serious hazard to vehicles or pedestrians will occur as a result of this request. Further, given the design of the house, adequate and appropriate facilities have been provided for the provision of an eight car garage. Accordingly, the Board unanimously grants the special permit requested, subject to the following conditions:

1. Only non-commercial vehicles shall be parked in the garage.
2. Prior to issuance of an amended building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; and 2) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

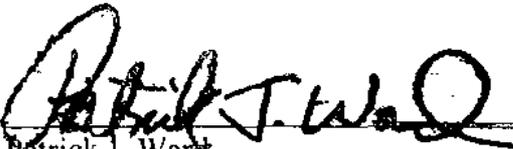
RECEIVED
TOWN OF BROOKFIELD
TOWN CLERK
MAY 20 2009
A True Copy

Date: May 20, 2009



Jonathan B. Book, Chairman

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals