



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

Town of Brookline

Massachusetts

Town Hall, 1st Floor
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 090017

Petitioners, Barry and Ronnie Sugarman, applied to the Building Commissioner for permission to establish and maintain a common driveway for the shared use and mutual benefit of both properties per plans at 219 Gardner Road and 189 Tappan Street. The application was denied and an appeal was taken to this Board.

On April 9, 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 May 21, 2009, at 7:15 p.m. in the Selectmen's conference room, 6th floor, Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to their attorney of record (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 April 30, 2009 and May 7, 2009 in the Brookline TAB, a newspaper published in Brookline. Copy of said notice is as follows:

LEGAL NOTICE

**TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
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: SUGARMAN, BARRY AND SUGARMAN, RONNIE W
Location of Premises: 219 GARDNER RD/189 TAPPAN ST BRKL
Date of Hearing: 5/21/2009
Time of Hearing: 7:15 p.m.
Place of Hearing: Selectmen's Conference Room, 6th flr.**

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

- 1.) 4.07; Table of Use Regulations; Accessory use #55; Special Permit Required**
- 2.) For the design of all Off-Street Parking Facilities:**
 - 6.04.4.h; Variance Required**
 - 6.04.5.c.1; Variance Required**
 - 6.04.5.c.2; Variance Required**
 - 6.04.5.c.3; Variance Required**
 - 6.04.5.c.4; Variance Required**
 - 6.04.5.e; Special Permit Required**
 - 6.04.12; Special Permit Required**

Of the Zoning By-Law to establish and maintain a common driveway for the shared use and mutual benefit of both properties per plans

at **219 GARDNER RD BRKL.**

Said Premises located in a **SC-10 (Single family and converted for a two 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.

**Enid Starr
Jesse Geller
Robert DeVries**

At the time and place specified in the notice, a public hearing was held by this Board. Due to a scheduling conflict, the place of the hearing was moved to Room 111, first floor, Town Hall.

Appropriate signage was placed at all entrances as well as the 6th floor representing the change in location. Present at the hearing were the Chairman, Jesse Geller, and Board Members, Jonathan Book and Rob DeVries. The Chairman asked if the petitioners waived the reading of the notice. Attorney Roger Lipson, representing the petitioners, agreed to waive a reading of the notice. The Chairman outlined the order of procedure to be followed related to the hearing.

The petitioners' attorney, Roger R. Lipson, of 7 Harvard Street, Brookline, addressed the Board on behalf of his clients, Barry and Ronnie W. Sugarman, the owners of 219 Gardner Road/189 Tappan Street, who reside in the main house at 219 Gardner Road. Mr. Lipson explained to the Board that his clients had received approval from the Board in December 14, 1989 for zoning relief necessary for the subdivision of the property into two lots and for approval of renovations to a carriage house located at 189 Tappan Street and to the main house at 219 Gardner Road, but had never recorded the decision. He explained that the petitioners now seek to subdivide their property but do not wish to make any changes to the carriage house and that they have a prospective buyer who is interested in purchasing the property. Mr. Lipson informed the Board that the carriage house, built in 1914, had been occupied continuously by tenants as a residence for at least the past 90 years. He said that the petitioners are asking for approval of the common driveway which has been in existence since the property was first built and would not require a curb cut. Mr. Lipson pointed out that such approval is conditioned upon the parties executing and recording a mutual easement for the common driveway in the Registry of Deeds. The petitioners also seek approval of the parking of two automobiles on the carriage house lot and four

automobiles on the main house lot, two of which will be located within the gravel parking area on the main house lot. Mr. Lipson advised the Board that it had been provided with a revised site plan that had been prepared following the Planning Board meeting at which the petitioner had agreed to extend the prior carriage house lot frontage by 10 feet up to a total of 40 feet in order to facilitate a parking arrangement whereby each side would be able to park their respective vehicles in accordance with the 5 foot setback requirements. In addition, he added, that the petitioners had also submitted, along with the revised site plan, a revised parking plan, by Lynn Osborn, a registered architect, showing the respective parking areas and a landscaping buffer zone between the two lots. Mr. Lipson pointed out that the two parking spaces on the carriage house lot will be facing a 6½ foot high, two foot thick, stone wall on top of which is a 6 foot wooden fence. He stated that the petitioners will be submitting a more detailed landscaping plan for final approval at a later date. Each lot, after subdivision, will be in compliance with the FAR requirements.

The Chairman asked if any of the Board members had any questions.

Rob DeVries asked whether the carriage house lot constituted a rear lot under Section 5.14.2 because the frontage has less than 25 feet. The Building Commissioner, Michael Shepard, replied that there was sufficient frontage so as not to constitute a rear lot (i.e. there exists 25 feet of frontage) and that the FAR was also not an issue.

The Chairman asked whether anyone wished to speak in favor or against the relief sought. No one spoke in favor or against the petition.

Lara Curtis, Senior Planner, delivered the findings of the Planning Department:

Section 4.07 – Table of Use Regulations, Accessory Use #55 – Parking for more than four non-commercial motor vehicles belonging to occupants of the property requires a special permit.

Section 6.04 – Design of Off-Street Parking Facilities

- .4.b – minimum of 20 feet wide for two-way use
- .5.c.2 – front and side yard setback
- .5.c.3 – rear yard setback
- .5.c.4 – setback from all lot lines for lots with more than six vehicles
- .5.e – common driveway by special permit
- .12 – substitution of dimensional requirements when installing new parking facilities for existing structures and land uses

| | Required | Existing | Proposed | Findings |
|--------------------------|-------------------|----------|--|------------------|
| Driveway Width | 20 feet (two-way) | 15 feet | 15 feet | Complies* |
| Side Yard Setback | 5 feet | 25 feet | 0 feet / crosses the proposed lot line | Special permit** |

*Parking lots for six vehicles or fewer are exempted from the restriction on driveway width. The proposed parking on the lot is for six vehicles.

**The Board of Appeals may by special permit authorize the owners of adjoining properties to establish common driveways under mutual easements.

Ms. Curtis said that the Planning Board is supportive of this proposal to recognize and improve upon currently existing circumstances. This proposal will create two distinct parking areas for two separate dwellings, and allow for additional landscaping. The currently existing driveway and parking arrangement has existed for some time, and allowing for a common driveway will prevent the addition of another curb cut when the lot is subdivided. However, both parking areas for the carriage house and the new dwelling should comply with setback requirements, and a five-foot buffer should exist on both properties. The Planning Board is supportive of the applicants' preferred scenario A if the proposed new lot line is modified so that both properties have a five-foot setback for their parking areas. Additionally, the Board is not opposed to the existing gravel parking area, which would bring the total parking spaces for the main dwelling to four.

Therefore, the Planning Board recommends approval of the proposal and plans, including the parking plan prepared by Osborn Studio + and dated 5/11/09, and the subdivision plan prepared by Boston Survey, dated 5/14/09, and marked as scenario "A," subject to the following conditions:

1. **The proposed property line shall be moved so that a 10-foot-wide landscape buffer between parking areas is divided equally between both the carriage house lot and the main dwelling lot.**

2. **An updated ANR plan shall be submitted to the Planning Board for endorsement.**
3. **The applicant shall record the mutual easements for the common driveway, including dimensions indicating the driveway's width, at the Registry of Deeds in order for the special permit to become effective.**
4. **The applicant shall apply for a building permit to change the use of the carriage house into a principal single-family dwelling.**
5. **Prior to issuance of a building permit, a final landscaping plan, indicating planting types and locations and hardscape materials for all parking areas on both properties, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
6. **Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval to ensure conformance with the Board of Appeals decision: 1) a final site plan, prepared by a registered engineer or land surveyor; and 2) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.**

Michael Shepard, Building Commissioner delivered the comments of the Building Department. He said that essentially this was the same request made 20 years ago that was approved and that the only reason the petitioners are back again is because the decision wasn't recorded. He pointed out that the petitioners have worked with the Planning Department to make certain that there was adequate space available on the carriage house lot for parking. Mr. Shepard stated that the Building Department supports the proposal and the conditions proposed by the Planning Board. He said that the carriage house had been occupied for decades and therefore the requested relief entails no change of use.

The members of the Board then discussed the merits of the application. Mr. Book expressed his approval of the application subject to the Planning Board conditions. Mr. DeVries stated that he was in favor as well. The Chairman also voted in favor.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the requirements for the issuance of a special permit under Section 9.05 of the Zoning By-Law have been satisfied in connection with the relief sought: for the design of off-street parking facilities as set forth in Section 6.04.4.b, 6.04.5.c.2, 6.04.5.c.3, 6.04.5.c.4, 6.04.5.e and pursuant to Section 6.02.12, all of the Zoning By-Law.

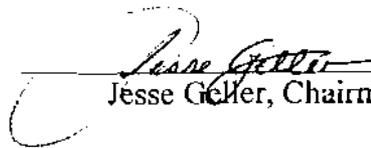
The Board finds that a special permit is warranted based upon the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

- 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.
- 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 votes unanimously to grant the requested relief subject to the following conditions:

1. **The proposed property line shall be moved so that a 10-foot-wide landscape buffer between parking areas is divided equally between both the carriage house lot and the main dwelling lot.**
2. **An updated ANR plan shall be submitted to the Planning Board for endorsement.**
3. **The applicant shall record the mutual easements for the common driveway, including dimensions indicating the driveway's width, at the Registry of Deeds in order for the special permit to become effective.**
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Unanimous Decision
of the Board of Appeals



Jesse Geller, Chairman