



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. 090020

Petitioners, Natalie Naiman and Alexander Goldfarb, applied to the Building Commissioner for permission to demolish an existing attached garage and to construct an addition with a garage below and living space above. Also, to construct a two-story bay on the rear of the house and a new covered overhang on the front of their residence at 84 Rawson Road. The application was denied and an appeal was taken to this Board.

On April 24 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 June 11, 2009 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 his 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 May 21 and 28, 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:

Petitioners: NATALIE NAIMAN 7 ALEXANDER GOLDFARB

Location of Premises: 84 RAWSON RD BRKL

Date of Hearing: 06/11/2009

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:

5.20, Floor Area Ratio, Variance Required

5.22.3.c, Exceeding Maximum Gross floor area for Residential Units, Special Permit Required

5.43, Exceptions to Yard and Setback Regulations, Special Permit Required

5.50, Front Yard Requirements, Variance Required

5.51, Projections into Front Yards, Variance Required

5.60, Side Yard Requirements, Variance Required.

5.61, Projections into Side Yards, Variance Required

For the Design of All Off-Street Parking Facilities:

6.04.4.c, Variance Required

6.04.4.3, Variance Required

6.04.12, Special Permit Required.

8.02.2, Alteration or Extension, Special Permit Required of the Zoning By-Law to demolish an existing attached garage and to construct an addition with a lower level with living space above. Also the construction of a two-story bay on the rear façade and a new covered over-hang on the front façade as well at **84 RAWSON RD BRKL.**

Said Premise located in a S-7 (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, Enid Starr and board members Jonathan Book and Mark Zuroff. Attorney Jacob Walters of Goldenberg & Walters presented the case before the Board.

Mr. Walters described the site and neighborhood at 84 Rawson Road as a two-story brick colonial single-family house that was built in 1937. The home has an attached garage with a flat roof that accommodates parking for a single car as it is not quite wide enough to park two cars. There is a patio on the roof of the garage, which is accessible by a set of stairs that are attached to the side of the garage near the lot line. The existing garage is in a state of disrepair and the current driveway is a rather steep slope as the entire lot is located on a hill. The entire site has challenging topography, as the yard slopes both downward and as it is located on a hill.

Mr. Walters said that his clients, Natalie Naiman and Alex Goldfarb, are proposing to demolish their existing attached garage and reconstruct it to accommodate parking for two cars, with a second story addition. In addition, the applicants are proposing to construct a cantilevered bay on the first and second floors on the rear of the house to allow for a moderately larger dining room on the first floor and master bathroom on the second floor. The bays will create an additional 60 square feet of living space. The applicants are also proposing to add a deck in the rear yard, which does not require zoning relief, and extensive landscaping.

The garage extension will be located where the current stairs that lead to the garage roof deck are located. A new set of stairs will be installed on the side of the garage that will lead to the rear yard, but the stairs going up will no longer be necessary. The second story addition will encompass 273 square feet of new living space and a new walk-out deck over the garage. The new garage and second story will be clad in concrete clapboard. In addition, the applicants are proposing to extend their stoop roof

overhang to match the garage roof overhang between the first and second story. The new roofing will be asphalt shingles.

Mr. Walters stated that all the required relief could be granted by the issuance of three (3) special permits, under Sections 5.02.3.c, Section 5.43 and Section 8.02.2. Mr. Walters stated that the proposed increase in floor area was less than 350 square feet and the resulting floor area ratio not more than 150% of the allowed floor area ratio. Accordingly, the increased floor area complies with Section 5.02.3.c. As for the side yard set back violations, Mr. Walters stated that pursuant to Section 5.43, the applicants could provide counterbalancing amenities, in this case extensive landscaping, a new retaining wall and the renovation of an old existing retaining wall. Mr. Walters stated that the design of the rear yard will substantially improve the site and the neighbors' view of the same. Addressing the last needed Special Permit, Mr. Walters said that the garage addition would extend the side yard setback violation requiring relief under Section 8.02.2. Mr. Walters also cited the requirements for Special Permit set forth in Section 9.05 and stated that the site is appropriate for the proposed renovations, the development would not have an adverse effect upon the neighborhood and the work can and will be done in such a way as to not disturb or harm the trees on the border of the applicants property and that of their neighbor at 90 Rawson Road. The Chairman asked whether anyone in attendance wish to speak in favor or opposed to the proposal.

Mr. Oded Ghitza of 90 Rawson Road, the immediate abutter to the right, said that he and his wife strongly object to the proposal. He said that the vigorous excavation involved, poses a great danger to the roots of numerous healthy hemlock trees, 40 years old along his side of the property line. According to a certified arborist, damage to the roots will inflict irreversible damage to the trees. He said that the trees provide a natural, dense buffer between the properties. He said further that the proposed new stairs

would be at his lot line at the top and only three feet away at the bottom, thereby leaving minimal open space. He said that he does not oppose an addition that would have no effect on the existing vegetation.

There were several questions from the Board to Attorney Walters regarding the potential damage to the trees. Attorney Walters represented that his client would be happy to hire an arborist to oversee that portion of construction in the vicinity of the trees.

Polly Selkoe, Assistant Director for Regulatory Planning Delivered the Finding of the Planning Department.

Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	0.35 100%	.46 132%	.51 147%	Variance/ Special Permit*
Floor Area (s.f.)	2,282	3,014.5	3,347.5	

* Under Section 5.22.3.c the Board of Appeals may grant by special permit to increase floor area up to 350 s.f. if the resulting gross floor area of the building is less than 150% of the permitted gross floor area.

Section 5.50 – Front Yard Requirements

Section 5.51 – Projections into Front Yards

Section 5.60 – Side Yard Requirements

Section 5.61 – Projections into Side Yards

Dimensional Requirements	Required	Existing	Proposed	Relief
Front Yard Setback	20	16.6 ft.	16.5 ft.	Variance/Special Permit*
Side Yard Setback (garage side)	7.5	7.7 ft.	3.7 ft.	Variance/ Special Permit*
Side Yard Setback	7.5	7 ft.	7 ft.	Variance/ Special Permit*

* Under Section 5.43 a special permit may be issued by the Board of Appeals to waive setback requirements if a counterbalancing amenity is provided. The applicant has indicated they will be providing landscaping as a counterbalancing amenity.

Section 6.04.4.c & 6.04.4.e – Design of Off-Street Parking Facilities

Dimensional Requirements	Required	Existing	Proposed	Relief
Driveway Width	20 ft.	15 ft.	18 ft.	Complies*
Grade	< 10°	8°	Est. 5°	Complies*

* Under Section 6.04.12 a special permit may be issued by the Board of Appeals in lieu of dimensional requirements for a new parking facilities that serve an existing structure.

Section 8.02.2 – Alteration or Extension of Nonconforming Use

Ms. Selkoe reported that the Planning Board is in favor of the proposed additions, but would like to see the applicant address the concerns of some of the neighbors with respect to the retaining walls, drainage and the preservation of trees along the property line. As this house has been in a state of disrepair for some time, the repairs to the structure and the attempts to modernize this home are looked upon favorably by the neighbors, but the challenging topography of the lot raises concerns to ensure that neighboring homes are not detrimentally impacted by the alterations to the landscaping and retaining walls in the rear and side yards. The additions themselves are attractively designed and should allow for better utilization of the home. The Planning Board believes the applicants are offering a sufficient amount of counterbalancing amenities between the new and repaired retaining walls, landscaping, and the new fence. The new system of retaining walls will include new retaining walls as well as repairs to the existing retaining walls which will provide for a drainage on a site that otherwise does not have any drainage. The applicants are also proposing to retain as many existing trees as possible, though their arborist has identified a number of invasive species in their yard which may need to be removed and replaced. The Planning Board would like to see the applicants do as much as reasonably possible to replace any vegetation that is damaged and to maintain the same level of screening that currently exists. Therefore, the Planning Board recommended approval of the plans by House to Home Design & Renovation, dated 1/15/09 subject to the following conditions:

1. Prior to the issuance of a building permit, a final landscaping plan indicating all retaining wall sections and details, all existing and proposed trees and plantings, and all counterbalancing amenities including an alternative design of the steps shall be submitted for the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, final plans floor plans and elevations indicating exterior materials and an FAR analysis stamped and signed by a registered architect shall be submitted for the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, a final drainage plan shall be submitted for the review and approval of the Director of Engineering and Transportation.

4. Prior to 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 including grading details, stamped and signed by a registered engineer or land surveyor, including, grading details; 2) final building elevations stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds.

Michael Shepard, Building Commissioner, delivered the comments from the Building Department.

Mr. Shepard commented that the removal and reconstruction of the existing garage foundation, in his experience could not be undertaken without significant excavation close to the lot line. He opined that the excavator may in fact have to do some of its work from the neighboring property given the slope and site constraints. He said that special measures would have to be taken to minimize soil compaction from the machinery working at the site.

The Board members asked several questions relative to the proximity of the work and its potential effect on the neighboring trees. Attorney Walters, after consultation with his clients, requested that the Board continue the hearing without a finding until they could more adequately address the neighbor's concerns. The Board voted to extend the hearing until July 2, 2009 at 7:00 pm.

On July 2, 2009 the Board met and Attorney Walters presented new plans by the designer of record dated June 29, 2009. Attorney Walters explained that the new plans slightly diminish the incursion into the side setback by 8". The new plan uses a cantilever design to in effect hang a portion of the garage over the existing foundation to achieve the two-car garage requested while utilizing the existing foundation. No excavation is required on the side of the garage in the new plan and the existing steps will be retained to help with slope stabilization. Attorney Walters explained that his clients will access the rear yard from the eastern side of the house as opposed to the old plan along the west side. He said that there were no changes to the landscaping to the rear of the home and that his clients decided to forgo the planned deck over the garage facing the west in deference to neighbor concerns about privacy.

Mr. Walters concluded by saying that his clients, their architect and builder went to extraordinary lengths to assuage the concerns of their neighbors at 90 Rawson Road, and was pleased to say that those neighbors have withdrawn their objection and are in support of the project.

The Building Commissioner opined that the cantilever is a trusted architectural technique that requires significant structural detail and oversight to insure that it functions as designed. He said that should a building permit issue, he would require significant on site presence of a structural engineer. He said that the new plan, while not alleviating the setback issue of the original, goes a long way toward ameliorating the concerns of Mr. Ghitza, the abutter.

Mr. Ghitza said that the new plan satisfies his concerns relative to the potential damage to the trees but he asked the Board to consider two additional conditions:

1. The stairs from the front to back yard shall be located on the east side of the house.
2. Prior to the issuance of a building permit, a structural engineer shall certify that the plans for the hanging garage on the west side of the house without construction of any new foundation or structural posts is feasible; and prior to a Certificate of Occupancy, the structural engineer shall certify that this portion of the garage has been built per these methods.

The Chairman responded that the Board would take his suggestions under advisement.

The Board then discussed the proposal and agreed that the revised plans dated June 29, 2009 by Dunn and Pingree Studios and the structural details by Alden Webster, structural engineer also dated June 29, 2009, appear to satisfy both the needs of the petitioner as well as those of the abutter.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant a Special Permit in accordance with Sections 5.02.3.c, 5.43 and 8.02.2 of the Zoning By-law and makes the following 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.
- 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 voted unanimously to grant the requested relief subject to the following conditions:

- 1. Prior to the issuance of a building permit, a final landscaping plan indicating all retaining wall sections and details, all existing and proposed trees and plantings, and all counterbalancing amenities including an alternative design of the steps shall be submitted for the review and approval of the Assistant Director of Regulatory Planning.**
- 2. Prior to the issuance of a building permit, final plans floor plans and elevations indicating exterior materials and an FAR analysis stamped and signed by a registered architect shall be submitted for the review and approval of the Assistant Director of Regulatory Planning.**
- 3. Prior to the issuance of a building permit, a final drainage plan shall be submitted for the review and approval of the Director of Engineering and Transportation.**
- 4. Prior to the issuance of a building permit a construction management plan shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 5. Stairs to access the backyard, if required, shall be constructed on the eastern side of the home only.**
- 6. Presence on the site of a certified arborist, retained by the petitioner, during any soil disturbing activities on the western side of the home.**
- 7. Prior to 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 including grading details, stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds.**

Unanimous Decision of
The Board of Appeals

FILED
AUG 19 2009
AUG 19 2009
AUG 19 2009

Filing Date: August 19, 2009

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals



Enid Starr, Chairman