



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. 090036

Petitioners, Alex and Althea Waldron, applied to the Building Commissioner for permission to demolish an existing garage, construct an addition including new garage, and expand the driveway and parking as well as construct miscellaneous site improvements at their home at 20 LaGrange Street. The application was denied and an appeal was taken to this Board.

On 11 June 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 23 July 2009, at 7:30 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 Petitioners, 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 2 and 9 July 2009 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:

Petitioners: WALDRON ALEX C and WALDRON ALTHEA A
Location of Premises: 20 LAGRANGE ST BRKL
Date of Hearing: 07/23/2009
Time of Hearing: 7:30 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:

- 5.09.2.j; Design Review, Special Permit Required.**
- 5.20; Floor Area Ratio, Variance Required**
- 5.22.3.b.1.b; Exceptions to Maximum Floor Area Ratio (FAR) Regulations For Residential Units, Special Permit Required.**
- 5.43; Exceptions to Yard and Setback Regulations, Special Permit Required.**
- 5.50; Front Yard Requirements, Variance Required.**
- 5.54.2; Exceptions for Existing Alignment, Variance Required.**
- 5.60; Side Yard Requirements Variance Required.**
- 5. 62; Fences and Terraces in Side Yards, Variance Required.**
- For the design of All Off- Street Parking Facilities;**
 - 6.04.4.c, Variance Required.**
 - 6.04.4.e, Variance Required.**
 - 6.04.4.f, Variance Required.**
 - 6.04.5.c.1, Special permit Required.**
 - 6.04.5.c.2, Variance Required.**
 - 6.04.9.b, Variance Required.**
 - 6.04.12, Special Permit Required**
 - 6.04.14, Variance Required.**

8.02.2; Alteration or Extension, Special Permit Required,

of the Zoning By-Law to remove an existing garage and to construct a new garage; to construct an addition (additional FAR); to extend and increase the driveway and parking areas, and to construct miscellaneous site improvements including retaining walls, exterior stairs and walkways per plans 20 LAGRANGE ST BRKL.

Said Premise located in a S-15 (single-family) zoning 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 Rob DeVries. Mr. Edward P. Forte, Architect, of Forte Architecture and Design, 705 Center Street, Boston, MA 02130, presented the petitioners' case before the Board.

Mr. Forte described the existing dwelling at 20 La Grange Street as a Tudor style single-family dwelling constructed in 1923 and the neighborhood as a residential neighborhood near the Hammond Street rotary in Brookline, Massachusetts. The existing building, lot and parking facilities are all non-conforming and pre-date the current Town Zoning By-Law. Unique conditions of the property include a narrow lot and severe topography with an approximate 30'-0" (20%) change in grade from the front lot line to rear. The main entrance to the dwelling is at about 17'-0" above street level.

He said that there is an existing underground accessory parking structure in the front yard, presently in poor condition, with non-conforming parking stalls and inadequate driveway access. Cars cannot fit in the garage, so they must park in the driveway, obstructing the pedestrian walkway at LaGrange Street. Vehicle access and egress pose a public safety hazard for the building's occupants and the general public as cars must back out onto a busy street over the sidewalk with limited visibility. There are steep steps and a pedestrian walkway with an approximate 15% slope to the house which present an additional safety hazard during winter conditions. There is no direct access from the parking areas to the dwelling entrance, requiring occupants to walk around the back of their cars out over the public way in order to gain access to the house. Existing landscape plantings are adequate at the house and are consistent with the surrounding neighborhood, but landscaping is sparse and ill-defined in other areas of the front and rear yards. The lack of a tree canopy and vegetation at the front yard has been adversely affected by the recent destruction of mature trees on the abutting property at 24 La Grange Street. La Grange Street is a main thoroughfare with no on-street parking or parking lane. The subject property is located near the Hammond Street rotary, a busy intersection. During rush hour, cars are typically backed up to the applicant's driveway, making access and egress even more difficult. These special conditions create a substantial hardship for the building's occupants inasmuch as they pose an impediment to comfortable habitation of the dwelling, additionally constituting a safety hazard not only to the building's occupants but to the general public as well, Mr. Forte said.

As to the history of the property, Mr. Forte said that the applicant purchased the property in 2005 with approved plans for a shared driveway with 12 La Grange Street. (Ref. Brookline Board of Appeals Case #: BOA050046 (#12), BOA050047 (#20), September 15, 2005.

Due to concerns about the height of proposed retaining walls designed at over 7'-0", safety of their children, the loss of usable and landscaped open space, and proximity of the proposed shared driveway to existing foundations, the plan was abandoned by mutual consent of the abutters. The abutter at 12 La Grange has subsequently placed construction in the side yard which would prevent implementation of this plan. Mr. Forte said that it should be noted that the previously approved plans would have permitted an increase in impervious surfaces on 20 La Grange Street by approximately 1,460 SF. The existing underground garage structure would have been allowed to remain in place, making total site impervious areas equal to about 1,735 SF and reducing total site open space areas to 11,729 SF.

Mr. Forte said that the proposal before the Board consists of reconstruction and relocation of the underground parking structure and the addition of a new entry foyer, and is intended to provide safe vehicular access and egress with an improved entry sequence from the driveway and street to the dwelling. The total combined area of all new and existing spaces is calculated at 4,038 GSF, in excess of allowed floor area, but less than the 20% increase of permitted gross area allowable by Special Permit under **Section 5.22.b.1.b** of the Zoning By-Law. Although the proposal does not conform to required side and rear yard setbacks, other dimensional requirements are provided to assure the same level of amenity to nearby properties and significant landscaping improvements are proposed as a counterbalancing amenity, and therefore the requirements of **Section 5.43** of the Zoning By-Law are satisfied. Specifically, the rear yard provided is 92.3', or 230% of the required setback of 40'. The proposed front yard setback, necessitated by dimensional requirements of off-street parking and special conditions of the property, exceeds what is allowed under the Zoning By-Law by less than 1%. The side yard

setback is in excess of what is allowed under the Zoning By-Law, but reduces the present non-conformity by 250%.

Mr. Forte said that it should also be noted that the proposed structure is at approximately 30% greater distance to the abutting building at 24 La Grange compared to the existing underground parking structure. Mr. Forte stated that FAR and setback relief can be granted as a Special Permit under the zoning sections cited of the Zoning By-Law. Strict conformance with zoning requirements for design of off-street parking facilities is constrained by topographical and other dimensional conditions of this particular site. He said that they have extensively reviewed the design of the driveway, vehicle access, required size of parking stalls and garage, and have incorporated the Planning Board's comments and suggestions in the revised plans. The proposed width devoted to vehicular use is necessitated by function required for vehicles to turn around and face outward to exit the property, and is designed to insure maximum safety for occupants and the general public. Given the special circumstances of this site, Mr. Forte said that the proposal meets the intent of the Zoning By-Law to the greatest extent possible with regard to the design of required off-street parking. A site drainage plan has been provided per requirements of **Section 6.04.9.b** of the Zoning By-Law. Extensive landscaping including garden stone walls, ornamental pavements, trellis-work, ornamental plantings, trees, and dense screening and buffering plantings are provided as a counter-balancing amenity under Section 5.43 of the Zoning By-Law. The proposed plan will preserve approximately 34% more site open space compared to the previously approved common driveway scheme, and exceeds required open space for the lot by 428%. The plan also incorporates exterior lighting for safety and aesthetic design effect.

Mr. Forte said that the petitioners have received letters of support from two abutters and have heard testimony in support of the proposal from neighbors during Planning Board hearings of 7/9/09 and 7/16/09. The petitioners have acknowledged the letter from the abutter at 24 La Grange to the Planning Board of 6/30/09 and have considered the abutter's concerns in subsequent revisions to the proposal. According to testimony heard at Planning Board hearings of 7/9/09 and 7/16/09, although the abutter at 24 LaGrange had specific concerns, he was not in general opposition to the proposal. The Planning Board voted unanimous approval of the proposal on 7/16/09, with certain qualifications.

In summary Mr. Forte said that this proposal has satisfied the intent of the Zoning By-Law and, as designed, will not negatively affect the Zoning District in which the building is located. Further, the proposal, by providing improved pedestrian and vehicular safety and detailed landscaping as a counterbalancing amenity, will not pose a detriment to the public good, nor substantially derogate or nullify the intent of the Zoning By-Law, and will enhance the public safety and welfare.

The Landscape Architect, Phillip Hresko, 110 Broad Street, Boston MA02110 outlined the landscape improvements related to the project. He discussed the plantings, walkways, retaining walls and the terrace atop the new garage. Mr. Hresko noted that due to landscaping to be planted along the property line, the garage and terrace will not be visible to the neighboring dwelling at 24 LaGrange Street.

Board Member DeVries asked questions relative to the grades and heights of various parts of the property, in particular the grade and height difference between the property and the abutting lot at 24 LaGrange Street. Mr. Hresko displayed a section view of the property to show the relative grades and heights. He explained that the plan was to get as much planting between the

terrace and the neighboring property at 24 LaGrange Street to provide some buffer for both. Mr. DeVries inquired about the width of the curb cut. Mr. Hresko said that, at the recommendation of the Planning Board, the width of the curb cut was reduced from slightly larger than 20' to 16' to reduce the sightlines onto the property. Mr. DeVries opined that a further reduction to fourteen (14') feet would provide a greater area for landscaping and offsetting amenity for the neighbor.

Board Member Book asked about the variance requested. He asked whether the garage could be serviced by a straight driveway as opposed to the hammerhead as proposed. Mr. Forte cited the narrowness of the lot as one factor. He said if the lot were wider and the house wider he could accomplish the same result without a variance. He said that the busy street prevented safe entry without the cars turning around first. Mr. Forte said, at the suggestion of the Planning Board, he provided a raised walkway to visually reduce the width of the parking area at the hammerhead. However, Mr. Forte acknowledged, cars while turning, could go over the walkway. Mr. Book said that essentially the hammerhead portion of the driveway is the only component in need of a variance and questioned both the need for a variance and whether sufficient evidence was presented to establish the requirements for granting a variance under Massachusetts General laws Chapter 40A, Section 10.

Chairman Geller asked about design review, specifically the environmental impact design standards under Section 5.09.4 of the Zoning By-Law. Mr. Forte stated that all the documents evidencing satisfaction of the environmental impact design standards were submitted to the Planning Board, including a stormwater drainage plan. Mr. Forte spoke about the relation of the buildings to the form of the streetscape and neighborhood. He said that the design was consistent with the surrounding neighborhood. Materials used will be similar to those that exist

and several architectural elements will be brought from the existing structure to the addition. He said that they intended to replicate the existing battened wall as well.

The Chairman asked whether anyone in the audience wished to speak in support of the application. Mr. Charles Roderick, the immediate abutter to the north, stated that he and his family support the proposal before the Board and he reiterated the safety concerns regarding backing onto LaGrange Street. He also said that he was extremely impressed with the landscaping proposed for the project.

The Chairman asked whether anyone in the audience wished to speak against the application. Mr. Ron Blumenfeld, of 24 LaGrange Street, the abutting lot, spoke against the relief requested. Mr. Blumenfeld questioned the uniqueness of the lot and structure and whether relief by variance was warranted. Mr. Blumenfeld showed a photo representing what he would view from his living room window, which sits higher than the applicant's house, and suggested that the terrace and new garage would reduce his privacy and impact his view. He is concerned with the amount of pavement in the parking court and the proximity of the addition to his property and noted that the terrace will be located "on top" of his property. He said that he was also concerned that should some future homeowner run a business from the applicants' property, trucks could be parked in the large front yard and detract further from the residential nature of the neighborhood. Mr. Blumenfeld and his wife also submitted into the hearing record a letter memorandum in opposition to the relief sought.

Mr. Arnon Blumenfield, also an abutter at 24 LaGrange Street, said he was concerned with the proximity of the new structures, including retaining walls, to the abutting property. He said that when the petitioners bought the property at 20 LaGrange Street it already violated the Zoning By-law as to set back, particularly the southern wall of the garage, and that the proposed

plan would make the non-conformity worse. Mr. Blumenfeld noted that most of the properties in the neighborhood on LaGrange Street are configured similarly to the applicants' existing property, that the new structure will be out of line with other structures in the neighborhood and that the original driveways and garages were designed forward and to the right on the respective lots so as not to encroach on abutting lots. He said he was concerned that if the plan is approved then some of his neighbors will file similar plans and the character of the neighborhood will change. He said most of the property owners along his neighborhood on LaGrange Street are required to back onto the roadway and there have been no accidents of which he is aware or on file at the Police Department resulting from backing onto the road. Mr. Blumenfeld said he was concerned that the garage extended past the front of the house. Mr. Blumenfeld noted that 34 LaGrange Street, which has a garage and driveway configuration similar to what is being proposed by the applicants, is a much wider lot than the applicants' lot. He was concerned about the height and structural integrity of the retaining wall required to level the applicants' property as well as their proximity to his lot. Mr. Blumenfeld was additionally afraid that the excavation required for construction of the retaining walls would have a detrimental effect upon his property. He said approval of the proposal would have a detrimental effect upon his quality of life; that the view from his home would be adversely impacted and would take-away from the rural style of living.

Lara Curtis, Senior Planner delivered the findings of the Planning Board.

FINDINGS

Section 5.09.2.j – Design Review: Special permit required.

Section 5.20 – Floor Area Ratio: *Variance required.*

Section 5.22.3.b.1.b – Exceptions to Maximum Floor Area Ratio (FAR) Regulations for Residential Units

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.50 – Front Yard Requirements

Section 5.54.2 – Exceptions for Existing Alignment

Section 5.60 – Side Yard Requirements

Section 5.62 – Fences and Terraces in Side Yards

Section 6.04 – Design of All Off-Street Parking Facilities

- .4.c – Entrance and exit drive width
- .4.e – Driveway grade greater than 10 percent
- .4.f – Designed to ensure maximum pedestrian and vehicular safety
- .5.c.1 – parking area front yard setback
- .5.c.2 – parking area side yard setback
- .9.b – surfacing and drainage of driveway and parking area
- .12 – installation of new parking facilities for existing structures
- .14 – more than 40% of façade width, or 24 feet, devoted to parking, *variance required*

Section 8.02.2 – Alteration or Extension: *A special permit is required to alter this non-conforming structure.*

| | Required | Existing | Proposed | Finding |
|--|--|---------------------------|--|--|
| Front Yard Setback (building) | 47.08 feet* (25 feet typically) | 63 feet | 33.6 feet Rev. Plan 46.5' | Special permit** |
| Side Yard Setback (building) | 15 feet | 9.7 feet | 7.25 feet Rev. Plan 8' | Special permit** |
| Front Yard Setback (parking area) | 47.08 feet | n/a | 10 feet (estimate) Rev. Plan 12.5' (estimate) | Special permit**† |
| Side Yard Setback (parking area) | 15 feet | n/a | 8.4 feet Rev. Plan 9.5' | Special permit**† |
| Driveway Width | 20 feet | 21.4 feet | 21.4 feet Rev. Plan 16' | Special permit, pre-existing condition† |
| Front Façade Devoted to Parking | Max 20.8 feet (40% of façade width) | n/a | 43.7 feet Rev. Plan 28.7' (walkway in place of outdoor parking space) | Variance |
| Floor Area Ratio (FAR) | 0.25; 3,366 s.f. 100% | 0.266; 3,579 s.f. 106% | 0.31; 4,189 s.f. 124% Rev. Pl. 0.30; 4,038 s.f 120% | Variance Rev. Pl. - Special Permit |

*Under Section 5.54.2, *Exceptions for Existing Alignment*, if the alignment of two or more buildings on either or both sides of a lot is farther from the street than the required front yard depth, the average of the existing alignment of all buildings within 150 feet of the lot shall be the required front yard.

**Under Section 5.43, *Exceptions to Yard and Setback Regulations*, the Board of Appeals may substitute by special permit other dimensional requirements for yards and setbacks if counterbalancing amenities are provided. The applicant has indicated enhanced landscaping and improved public safety would be provided as counterbalancing amenities.

†Under Section 6.04.12, where new parking facilities are being installed to serve existing structures, the Board of Appeals may allow by special permit the substitution of other dimensional requirements provided such substitution is necessary to permit the installation of some or all of the off-street parking spaces.

Ms. Curtis said that the Planning Board was not opposed to the construction of an attached garage and entryway addition to the front of this single-family, however, the Board is concerned about the amount of paving in front of the dwelling, and it is not clear if vehicles will be parked in this front area. This front paved area should be finished with either pavers or another decorative paving treatment to lessen its visual impact on the streetscape and more landscaping should be added. Additionally, because of the significant amount of excavation and the installation of retaining walls, all retaining wall designs should be certified by an engineer to ensure stability and safety prior to construction. The architect has indicated they are working with a structural engineer on this project.

Ms. Curtis reported that the applicant originally needed two variances for this proposal for FAR and parking wider than 40 percent of the building façade facing the street. The applicant has now revised the plan so that FAR is within the special permit requirements, and although a variance is still required for parking greater than 24', the applicant has reduced the width of the parking area and created a pedestrian walkway using different paving materials leading to the front door, which reduces the appearance of the paved parking area. Since the existing topographical conditions make it difficult to provide parking on site, and the current parking arrangement would be dangerous as vehicles must back out onto LaGrange Street, a busy public way, the Planning Board believes that the proposed plans with some modification provides safer parking access to the site. However, the Planning Board has asked that the applicant further reduce the paved parking area and substitute with landscaping in some areas, and indicate where vehicles will be parked, which the applicant has agreed to do so. Therefore, if the Board of Appeals finds that the requirements for a variance are met, the Planning Board recommends approval of the proposal and the plans, prepared by Forte Architecture + Design and dated

7/15/2009, and the site plan prepared by Slaneyside Land Surveyors and dated 7/23/2009, subject to the following conditions:

- 1. Prior to issuance of a building permit, final elevations, indicating all alterations to the building façade, 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 excavation and retaining wall details, planting types and locations, hardscape materials, and fencing and railing details, shall be submitted to the Planning Board for review and approval.**
- 3. Prior to issuance of a building permit, all plans for new retaining walls shall be reviewed and approved by a registered structural engineer to ensure safety and stability.**
- 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, stamped and signed by a registered engineer or land surveyor; 2) final 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.**

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. Mr. Shepard stated that there were a significant number of citations for the proposal before the Board. He said that the Zoning By-Law provides for “average alignment” in relation to the street. Because the homes in the vicinity are substantially farther from the road than what is required under the Zoning By-Law, the setback is effectively increased and thus there is a need for front yard relief. Mr. Shepard stated in response to one of the concerns of the abutter at #24 LaGrange Street, that retaining walls, subject to the appropriate height restriction, could be constructed on the petitioners’ side of the lot line without a set-back requirement. Mr. Shepard also in response to a neighbor’s concern relative to the parking of commercial vehicles stated that it was not allowed in a residential district without relief from the Board of Appeals.

Mr. Shepard noted that the petitioners' contention that there exists a safety hazard as a result of backing onto LaGrange Street, one of the grounds the petitioner cites for the granting of the variance, is the same safety or lack of safety considerations to which most of the neighbors are exposed. He said the only requested relief requiring a Variance is under **Section 6.04.14** of the Zoning By-Law (the 40% or 24' rule whichever is less devoted to parking or other vehicular use). Mr. Shepard said that he suspected the reason Town Meeting approved the 40% rule was to prevent vast expanses of paving to the front of homes in Brookline. If the driveway were reduced to the allowed width Mr. Shepard opined that all the relief required could be by Special Permit. Mr. Shepard stated that from his perspective it would be a better plan for the neighborhood if the hammerhead portion of the driveway were significantly reduced or eliminated.

The Chairman asked Mr. Forte if he had any comments in rebuttal or closing remarks. Regarding safety, Mr. Forte stated that the safety concerns of the applicants was a real one and noted that there was a roll-over several weeks ago. He said that the argument that there haven't been any accidents doesn't mean that there won't be one. Mr. Forte noted that the unique site conditions specific to the petitioners' lot made for difficult lines of sight, exacerbating the safety issue. He said exiting the driveway onto the street head-first will greatly improve safety. Mr. Forte also stated that the property's proximity to the traffic rotary make backing-up more difficult onto LaGrange Street, particularly during rush hour. With respect to the abutters comments relative to his view of 20 Lagrange Street, Mr. Forte responded that the landscape team went to great lengths to provide additional screening to ameliorate the neighbors' concerns. Mr. Forte noted that the abutter recently removed mature trees on his own property that would have provided the same or better screening. Mr. Forte said that the project satisfies the

requirements of Section 5.43 of the Zoning By-Law given the benefits provided. He said the extremely large rear yard and considerable landscaping provides at least the same standard of amenity to the nearby properties as would otherwise be achieved by compliance with the Zoning By-Law. As for the size of the garage, Mr. Forte said that he designed the garage to accommodate the needs of the family without its being oversized. He said that he reduced the size by seventy square feet in response to comments from the Planning Board changing the F.A.R. relief sought from a Variance to a Special Permit . Mr. Forte reported that the petitioners had a sub-surface geotechnical investigation done at the site and a copy has been submitted to the Planning Board. He said that ledge was not encountered but heavy, dense glacial till exists on the site. This type of soil material he said is more conducive to the site improvements planned for the project. Mr. Forte said that the petitioners are working with a structural engineer relative to the design of the retaining walls on the site. Mr. Hresko commented on the topography specific to the site and noted that the abutting neighbors would only see landscape screening.

The Chairman asked whether any of the other Members of the Board had any further questions. There being no further questions, the Board deliberated. During discussion, Board Member Jonathan Book, stated that he wasn't convinced that the requisite conditions existed necessary for issuance of a Variance, particularly, he did not believe that the petitioner had demonstrated factors sufficient to establish that circumstances relating to soil conditions, shape or topography of the petitioners' land or the structure especially affected the petitioners' land or structures and did not also affect generally the Zoning District in which it is located. Furthermore, he said that he was not sure whether a variance was even necessary given that the petitioners could still construct a driveway without a hammerhead for turning around with only Special Permit relief. Mr. Book stated that he would not be in favor of the issuance of a

Variance as requested by the petitioners. With regard to the requested relief by Special Permits, Mr. Book said that the Board is permitted to issue certain Special Permits. He said that the project seemed well planned and he was not persuaded by the neighbors' concerns about negative impacts due to the proximity of the garage and terrace to the property side yard and topography of the site. He said the garage for the most part is subterranean, the only visible part being the terrace on top of it. He said that the petitioners could alternatively construct a terrace on their property in the proposed location without relief and therefore he did not believe there is actual harm to the neighbors. Mr. Book stated that he is convinced that the petitioners meet all the requirements for the grant of the Special Permit relief requested. He said that the project as designed will provide a much better buffer between the properties.

Mr. DeVries said that he substantially agreed with Mr. Book's analysis in that the proposal does not meet the requirements for a Variance and that the petitioners might get the desired result regarding turning with a redesign of the driveway. He said that he agrees with Mr. Book regarding the grant of Special Permits that the counterbalancing amenities more than compensate for the dimensional relief requested.

The Chairman complimented Mr. Book and Mr. DeVries for their thoughtful analysis in this case. He too agreed that the statutory grounds for a Variance were not met and noted (in response to comments made by Mr. Forte to establish a similar precedential project in the neighborhood and in reliance on information from Building Commissioner Shepard) that the similar driveway and garage alterations previously constructed elsewhere on the street was approved before **Section 6.04.14** of the Zoning By-Law was in effect. With respect to the Special Permit relief sought, Mr. Geller said that the project meets the requirements for relief under the Town of Brookline Zoning By-Law.

There being no further questions and the Board having deliberated on this matter and having considered the foregoing testimony, the Board concludes that the requirements of Section 9.05, 5.09, 5.22.b.1.b, 5.43, 6.04.12 and 8.02.2 of the Zoning By-Law have been satisfied and it is desirable to grant Special Permits thereunder. The Board specifically makes the following 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.

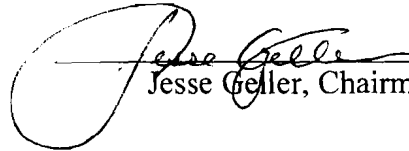
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1. Prior to issuance of a building permit, final elevations, indicating all alterations to the building façade, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2. Prior to issuance of a building permit, final landscaping and civil plans, indicating all counterbalancing amenities, excavation and retaining wall details, planting types and locations, hardscape materials, and fencing and railing details, shall be submitted to the Planning Board for review and approval. The proposed hammerhead area in front of the dwelling must not permit access for driving, parking or turning of motor vehicles.**
- 3. Prior to issuance of a building permit, all plans for new retaining walls shall be reviewed and approved by a registered structural engineer to ensure safety and stability. All construction on the site must be in accordance with the plans.**
- 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, stamped and signed by a registered engineer or land surveyor; 2) final elevations, stamped and signed**

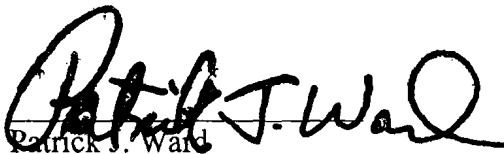
by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: September 4, 2009


Jesse Geller, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

2009 SEP -4 A 8:49