

**Brookline Board of Appeals
March 31, 2016, 7:00 PM
Public Hearing**

**333 Washington Street
6th Floor Selectmen's Hearing Room**

Board Members Present: Mark Zuroff (Chairman), Christopher Hussey, Kate Poverman
Staff Present: Michael Yanovitch (Building Dept.), Jay Rosa (Planning Department)

25 Alton Court (continued)

Proposal: Renovate three-family dwelling, relocate living space in the basement, and construct a roof deck

Zoning District: M-1.0 (Apartment House)

Precinct: 7

Board Decision: Relief request **granted**, subject to conditions

63 Hillside Road

Proposal: Construct a driveway and parking court in the front yard

Zoning District: S-15 (Single-Family)

Precinct: 14

Board Decision: Relief request **granted**, subject to conditions

195 Winthrop Road

Proposal: Construct a parking area and retaining walls at the rear

Zoning District: M-1.5 (Apartment House)

Precinct: 12

Board Decision: Proposal **remanded** to the Planning Board due to significant modifications

Minutes shall be posted on the Town of Brookline website (<http://www.brooklinema.gov/564/Zoning-Board-of-Appeals>) upon approval. Draft minutes shall be made available upon request.

Decisions shall be posted on the Town of Brookline website (www.brooklinema.gov). Appeals, if any, shall be filed with land court or superior court within twenty days after the date of filing of such notice in the office of the town clerk.

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7:00PM

25 Alton Court (continued case) – Renovate three-family dwelling, relocate living space in the basement, and construct a roof deck

Board Chairman Mark Zuroff opened the hearing and called case #2015-0056. Mr. Zuroff reviewed standard hearing procedure.

The Petitioner's Attorney, Jacob Walters of Walters, Shannon & Jensen (27 Harvard Street, Brookline, MA) waived a reading of public hearing notice for the record and stated that this proposal was heard by the Board in January of 2016 and continued to this date certain. Mr. Walters reviewed the zoning relief requested. Mr. Walters stated that finished basement space will be reconfigured toward the rear of the structure in order to utilize existing windows/doors for natural light and egress. Because floor area cannot be decommissioned, this basement reconfiguration results in a floor area increase of approximately 199 square feet. This floor area increase requires additional usable open space (10%), which is not feasible for the subject lot due to the steep grade of the rear yard and limited area in the front-yard. Mr. Walters stated that open space is provided, however none of the provided space satisfies the Zoning By-Law definition of usable open space.

Mr. Walters further stated that the statutory requirements for a variance could be met in order to waive this deficient open space however Mr. Walters believed that the provisions of By-Law Section 5.43 may also be applied in order to waive dimensional requirements for usable open space if counterbalancing amenity is provided.

Mr. Walters stated that the Petitioner is proposing to install a rear patio and plantings to serve as this counterbalancing amenity. The patio proposal was suggested by the Board at the prior hearing on this matter and does not require that scale of construction that a deck would in this same area.

Mr. Walters stated that the grant of special permit relief under Section 5.43 does not derogate from the intent of the By-Law and all proposed alterations are not easily visible from surrounding properties. Mr. Walters confirmed that special permit relief may also be granted for the interior floor area increase that is less than 130% of the base allowed floor area as permitted in the M-1.0 zoning district.

Chairman Zuroff requested clarified that the Petitioner is requesting to apply zoning relief that may be provided under Section 5.43, thus eliminating the need for the issuance of a variance. Mr. Walters confirmed that the Petitioner request zoning relief under 5.43 specifically to waive the By-Law requirement that usable open space must provide minimum dimensions of 15' x 15'. Mr.

Walters further stated that open space at the rear meets open space requirements in terms of the overall square footage but presents dimensions that are closer to 8' x 20'.

Board Member Kate Poverman requested that the Petitioner further describe the proposed rear patio because no plans or drawings were submitted detailing this feature. Mr. Walters stated that the decorative bluestone patio will be approximately 7' x 20' and will include planters. Mr. Walters noted that the patio proposal does not require the same level of condominium association review that a deck would.

Board Member Christopher Hussey agreed that a patio located at this rear portion of the lot is a more feasible design than a deck due to the steep grade and limited vehicular/construction equipment access to this portion of the property.

Ms. Poverman requested that Mr. Walters present project compliance with the statutory requirements for a variance. Mr. Walters stated that the condition of the land, the severe slope of the rear yard, makes the literal enforcement of open space requirements unattainable. Mr. Walters further stated that existing finished basement space does not meet current building code requirements for light and egress. The proposed basement reconfiguration will bring finished space into compliance. Mr. Walters also noted that although existing basement area will be converted into storage, the By-Law also does not allowed this eliminated floor area to be "decommissioned."

Chairman Zuroff called for public comment in favor of, or in opposition to, the Petitioner's proposal.

No members of the public commented.

Chairman Zuroff requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board. Mr. Rosa stated that the Planning Board unanimously recommended approval of the basement reconfiguration. Proposed basement modifications require no alteration to exterior portions of the structure and are intended to improve natural light and egress to finished basement space. Mr. Rosa also stated that the Petitioner installed a roof deck which also can be credited toward usable open space calculations but still does not satisfy the full requirement based on the proposed gross floor area increase. Therefore, the Planning Board recommended approval of plans submitted by Guy N. Grassi, dated 3/6/2015, and the site plan submitted by Guy N. Grassi, dated 11/30/2014. Should the Board of Appeals find that the statutory requirements for a variance and/or special permit are met, the Planning Board recommends the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans including gross floor area calculations and roof deck dimensions, and a surveyed final site plan including lot topography, subject to review and approval by the Assistant Director for Regulatory Planning.
2. 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 including lot topography stamped and signed by a registered engineer or

land surveyor; 2) final floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to the relief as requested. Mr. Yanovitch supported Mr. Walter's claim that necessary zoning relief may be granted in two ways. Mr. Yanovitch noted that the prior hearing on this matter primarily focused on the variance argument but the provisions of By-Law Section 5.43 have been utilized to issue special permit relief for yard and setback requirements, particularly when expanding residential space. Mr. Yanovitch agreed that this proposal is a "victim" of the decommissioning provision included in the Zoning By-Law as referenced by Mr. Walters.

Board Deliberation

Mr. Hussey stated that a similar proposal was heard by the Board recently in which the lot was deficient in terms of open space and the Petitioner proposed to expand floor area within the existing footprint of the structure. Mr. Hussey supported the grant of a special permit rather than a variance of the Board finds that the standards for special permit relief are satisfied.

Ms. Poverman questioned whether the provided roof deck area could be credited toward usable open space calculations even though it is only accessible by the third-floor residential unit. The Board agreed that open space requirements relate to the entire property regardless of the limited residential access. Ms. Poverman stated that she was persuaded by both special permit and variance requests and she believed that the variance option is cleaner in terms of granting the requested open space relief.

Chairman Zuroff stated that, given the choice, he supported the grant of special permit relief under Section 5.43. Mr. Zuroff stated that the proposed floor area increase is modest and the Petitioner is providing counterbalancing amenities in accordance with Section 5.43 requirements. Mr. Zuroff concurred that the general By-Law requirement for the grant of a special permit are also satisfied in accordance with Section 9.05.

Unanimous Board grant of requested relief, subject to the following revised conditions:

- 1. Prior to the issuance of a building permit, the applicant shall submit final floor plans including gross floor area calculations and roof deck dimensions, and a surveyed final site plan including lot topography, subject to review and approval by the Assistant Director for Regulatory Planning.**
- 2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan including all counterbalancing amenities, subject to review and approval by the Assistant Director for 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 including lot topography stamped and signed by a**

registered engineer or land surveyor; 2) final floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

63 Hillside Road – Construct a driveway and parking court in the front yard

Board Chairman Zuroff called case #2016-0005 and reviewed standard hearing procedure.

The Petitioner's Attorney, Robert Allen of the Law Office of Robert Allen (300 Washington Street, Brookline, MA) waived a reading of public hearing notice for the record and stated that he is representing property owners Josh and Jessica Lutzker. Mr. Allen also introduced project architect, Jen Stevens and contractor Matt Cunningham. Mr. Allen stated that the single-family structure at 63 Hillside was constructed in the early 1900's and is situated approximately 30 feet from the front lot line. Mr. Allen confirmed that the subject property is located within an S-15 zoning district and the majority of open space that satisfies minimum lot size requirements for this district is located to the rear of the structure.

Mr. Allen stated that the Petitioner is requesting zoning relief to expand a front parking area in order to improve vehicular maneuverability, particularly when exiting the property. Mr. Allen stated that an attached three-car garage will be constructed and requires no zoning relief. The proposed 50' x 35' paved surface will be located directly in front of this new garage. Mr. Allen stated that the Planning Board did not support this requested parking area located within the required front-yard setback, but he believed this location to be the most appropriate due to the existing curb cut, grade changes toward the rear of the yard, and the priority to maintain existing open space. Mr. Allen also noted that the proposed parking setback is technically 0 feet from the front lot line, but Hillside Road is a private way and a 10-foot wide strip of landscaped space would remain between this parking surface and Hillside Road.

Project Architect Jen Stevens stated that this proposal was accompanied by a year-long design process. The subject property is located at the end of a private dead-end and major renovations are proposed to "bring life into the home." The new garage location is intended to maintain a consistent front façade and limit impact on soil, drainage, and a sewage easement located directly to the rear of the proposed garage footprint. Locating this garage, and associated parking court, would require a more significant redesign of interior portions of the structure. Ms. Stevens further stated that unique clay soil is found at the site therefore a sizable infiltration system was engineered to limit and improve water runoff particularly as the lot slopes down toward Lee Street to the northeast. Ms. Stevens concluded her comments by reviewing dense landscape features that will be installed between the proposed parking court and Hillside Road.

Chairman Zuroff questioned whether or not these proposed landscaping features are located in an area where a sidewalk would otherwise be. Ms. Stevens stated that Hillside Road is privately maintained and no sidewalks are included for the length of the dead end.

Ms. Poverman requested additional detail about the 15-foot wide passageway along the northwestern side lot line that is included on the submitted site plan. Ms. Stevens stated that the passageway is included as part of the subject property and is not a public easement. The passageway does follow a town sewer easement and is comprised of trees, grass, and landscaped features.

Mr. Hussey requested additional information about potential impact of construction on sewer infrastructure. Ms. Stevens stated that the Petitioner intends to improve sewer infrastructure in place. If the garage were to be situated on top of the sewer easement, then a more significant replacement with additional sleeves would be required at a more substantial cost.

Ms. Poverman requested that the Petitioner detail the need for this seemingly oversized parking court. Ms. Stevens stated that all parked vehicles will be able to turn around on the property itself prior to exiting. Ms. Stevens further stated that the Hillside Road dead end is nearly flush with the driveway curb cut and no hammerhead or cul-de-sac area allows for vehicles to maneuver. This condition requires residents to back out into the driveway located directly across the Street (60 Hillside Rd.) in order to safely navigate. Ms. Stevens also stated that front parking courts of this type and size are common in the immediate neighborhood.

Ms. Poverman requested that the Petitioner describe proposed parking court materials. Ms. Stevens stated that the parking court will be constructed of asphalt with cobblestone aprons. This material is impervious.

Chairman Zuroff questioned why the entire court is not constructed as cobblestone similar to several other parking courts in the neighborhood that were referenced by the Petitioner. Ms. Stevens state that the cost for full cobblestone is significant and the Petitioner wishes to install a heated parking area to limit snow build up and maintain surrounding landscape features.

Board Members agreed that the dimensions of the parking court are generous and an included basketball court should be removed from project plans.

Attorney Allen noted that the most impacted neighboring resident at 60 Hillside Road submitted a letter to the Board in support of this parking court proposal. Mr. Allen believed the requested zoning relief for the front-yard setback to be minimal and can be granted under By-Law Section 5.43 if counterbalancing amenities are provided. Mr. Allen also reviewed compliance with By-Law Section 9.05 standards for the grant of a special permit, specifically highlighting the fact the vehicular and pedestrian safety will be enhanced by this design.

Chairman Zuroff called for public comment in favor of, or in opposition to, the Petitioner's proposal.

Stuart Madnick of 55 Lee Street requested clarification as to the specific elements of this proposal that require zoning relief. Deputy Building Commissioner Michael Yanovitch confirmed that the front portion of the parking court (southern corner) requires zoning relief in the form of a special permit because it is situated within the required 25 foot front-yard setback.

Grace Lau of 75 Lee Street stated that she has maintained the aforementioned pathway for nearly 15 years. She was not clear who would maintain this area in the future when new property owners move in. Ms. Lau stated that she is not opposed to this proposal but there is a large-scale of ongoing construction work and water runoff is already a challenge for her property, which is located directly down slope from the subject property.

Chairman Zuroff requested that Jay Rosa review the findings of the Planning Board. Mr. Rosa stated that the Planning Board unanimously recommended denial of the proposed front parking court. In general, the Board does not support parking within the required front yard and the Board was troubled by the loss of existing landscaped features with no proposed counterbalancing amenities. Board Members did feel that the parking surface could be pulled further away from the front lot line in questions. Mr. Rosa further stated that the new landscaping plan presented by Ms. Stevens does address some of these issues and he agreed that parking courts of this style and location are typical for this neighborhood. Mr. Rosa confirmed that the Planning Board unanimously recommended denial of the site plan submitted by Metrowest Engineering, Inc., dated 11/6/2015.

Chairman Zuroff requested that Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch agreed that the front-yard location of the basketball court is not permitted. Mr. Yanovitch stated that this form of parking relief is most commonly found with circular driveways and he reiterated the fact that only a portion of the proposed court is triggering the need for zoning relief. Mr. Yanovitch confirmed that all drainage and infiltration plans have been reviewed by the Town's Engineering Department and will be further reviewed prior to the issuance of any building permit.

Mr. Hussey questioned whether or not a vehicle parked in the surface court could safely do so without blocking any of the three garage bays. Ms. Stevens confirmed that vehicles parked at the eastern most portions of the court would not block vehicles exiting attached garage bays.

Board Deliberation

Mr. Hussey stated that the standards for the grant of a special permit are met in his opinion. Mr. Hussey agreed that the front parking court is a common design feature in this neighborhood. Mr. Hussey supported the consideration of alternate paving materials and he was not troubled by the modest loss of open space given the oversized nature of the lot and the limited likelihood of further expanding the structure toward the rear.

Ms. Poverman was hesitant to support this proposal given the lack of Planning Board support, the loss of open space in favor of impervious surface, and large size of the court itself. Despite these issues, Ms. Poverman stated that the project does not significantly deviate from the By-Law standards for the grant of a special permit.

Chairman Zuroff agreed with these two positions. Mr. Zuroff stated that the proposed court dimensions were dictated in part by the desire to include basketball activity, which is not permitted in the front yard. Mr. Zuroff agreed that the project requires modest dimensional relief but he believed that there are strategies to reduce the overall size and incorporate permeable construction materials. Mr. Zuroff also stated that these modifications would aesthetically enhance the proposal.

Mr. Zuroff supported the grant of relief as requested and encouraged the Board to impose conditions to incorporate these design modifications.

Unanimous Board grant of requested zoning relief, subject to the following conditions:

- 1. Prior to the issuance of a building permit, the applicant shall submit final site plan including reduced parking court dimensions, subject to review and approval by the Assistant Director for Regulatory Planning.**
- 2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan including a cobblestone parking court and all counterbalancing amenities, subject to review and approval by the Assistant Director for 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

195 Winthrop Road – Construct a parking area and retaining walls at the rear

Board Chairman Zuroff called case #2015-0030 and reviewed standard hearing procedure.

The Petitioner's Attorney, Robert Allen of the Law Office of Robert Allen (300 Washington, St., Brookline, MA) stated that he is seeking to continue this matter. The Petitioner and abutting property owner are still finalizing a private easement agreement and project plans will be revised to incorporate this feature.

Board Members agreed that this proposal is not ripe for Board of Appeals review and revised plans must be heard by the Planning Board prior to Board of Appeals review. With this in mind, the Board did not establish a continuance date certain, remanded the project to the Planning Board, and ensured that public notice will be distributed prior a future Board hearing on this matter in accordance with M.G.L., c.40A.

Hearing Closed.