

**Brookline Board of Appeals  
September 22, 2016, 7:00 PM  
Public Hearing  
333 Washington Street  
Room 111, 1<sup>st</sup> Floor Town Hall**

**Board Members Present** – Mark Zuroff (Chairman), Jonathan Book, Chris Hussey

**Staff Present** – Mike Yanovitch (Deputy Building Commissioner), Ashley Clark (Planning Dept.)

**7:00PM**

**189 Eliot Street:** Construct a single-story addition at the rear

Board Chairman Zuroff opened the hearing and called case #2015-0074, 189 Eliot Street. Mr. Zuroff reviewed standard hearing procedure.

Mel Schuman, the applicant, was present for the hearing. Mr. Schuman stated that they are seeking to construct a small 136 square feet addition to expand the kitchen and provide a laundry room. Mr. Schuman stated the proposal is not visible from the street and the neighbors are in support.

Mr. Schuman stated due to a previous grant of zoning relief to a previous owner in 1986 for 160 square foot addition, it makes getting a new special permit under that provision is prohibited.

Mr. Schuman stated the By-law does allow for a modification of a previous decision for a special permit.

Mr. Schuman described why he also believes his proposal meets the requirements for a variance due to the small size of the lot and house.

Mr. Schuman stated that they are seeking to do a small addition to alleviate the constrictions of a small kitchen by expanding the kitchen and providing a laundry room. Mr. Schuman stated that there is a hardship because there are houses all over being renovated and taking advantage of **§5.22** but they cannot take advantage of making it difficult in terms of resale.

Mr. Schuman stated that the Board should also consider amending the previous special permit.

Mr. Zuroff asked for questions.

Mr. Book stated would like to hear argument for amending special permit.

Mr. Schuman stated that if you look at **§5.22.3.c** it acts like a failsafe. Mr. Schuman stated that the reason this section was drafted was to stop people from being able to repeatedly seek relief under this section. Mr. Schuman described the intent of the section as to allow a homeowner to get up to 350 sf, if you can't use the other provisions. Mr. Schuman stated that he did not see why the Board can't amend the previously granted special permit. Mr. Schuman further explained even with this addition, the maximum 350 square feet will not be exceeded.

There was a discussion regarding the application of the sections under **§ 5.22**.

Mr. Book confirmed the new addition with previous sought is still under 350 sf.

Mr. Zuroff stated that he did not think argument was made to support a variance finding. Mr. Zuroff stated that a variance is related to the topography of the lot and the uniqueness of the lot. Mr. Zuroff stated that the hardship is not just because of a small house on a small lot.

Mr. Schuman stated that the fact the house is small in a district with larger lots makes it unique.

Mr. Zuroff explained that the requirements to meet a variance are much stricter than just a small house on a small lot.

Mr. Schuman stated that he thought he had a credible argument for a variance, though it may not be the strongest. Mr. Schuman believed the parameters had been met and the proposal is worthy of relief. Mr. Schuman stated particularly with discretionary powers the Board has and the fact that it is causing no harm to anyone in the neighborhood and the fact the neighbors approve of it and it's not visible from the street.

Mr. Zuroff asked for public comment in favor or opposed to the proposal.

There was no public comment submitted.

Mr. Zuroff called upon Zoning Coordinator, Ashley Clark to deliver the findings of the Planning Department. Ms. Clark stated the Planning Board unanimously supported this single-story rear addition. The proposed floor area increase is modest and all exterior modifications are not easily visible from surrounding properties. Wood clapboard additions of this nature are common amongst brick single-family dwellings located throughout the surrounding Fisher Hill and Chestnut Hill Neighborhoods. The Board is not convinced that special permit relief under By-Law §5.22.3.c may be applied to this addition based on the grant of prior zoning relief. The Board did consider the applicability of **M.G.L. c.40B, §6** provisions as they relate to the alteration of a pre-existing nonconforming single-family structure but ultimately defer to the Board of Appeals' ruling on that matter.

**Should the Board of Appeals find that the statutory requirements for a variance are met the Planning Board recommends approval of floor plans and elevations by Michael J. Huller, dated 11/20/2016, and the site plan by Bruce Bradford, dated 12/1/2015, subject to the following conditions:**

- 1. Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations, 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, stamped and signed by a registered engineer or land surveyor, 2) final floor plans and 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.**

Mr. Zuroff called upon Deputy Building Commissioner Mike Yanovitch to deliver the opinion of the Building Department. Mr. Yanovitch stated the Building Department has no objection to this request. Mr. Yanovitch stated this project is a casualty of layered zoning over the years. Mr. Yanovitch explained though up to the Board for interpretation, he understands Mr. Schuman's proposal for a modification of the previous special permit decision. Mr. Yanovitch stated the intention was to allow max out of FAR to 150% as long as it was a small addition. This proposal is small and does not max out 350 or 150% so it doesn't qualify for the 120% or 130% or subparagraph c. Mr. Yanovitch stated there may be an issue with uniform districts as well, as there are differences in what the neighbor can do with their structure and what can be done next door. Mr. Yanovitch stated he agreed with the applicant that it's possible to modify the previous special permit but also see the argument for a variance. Mr. Yanovitch stated there are some hardships here that may have been caused by layered zoning. Mr. Yanovitch stated if the board does find the applicant meets the criteria for the grant of a special permit or modification the Building Department will work with the application to ensure compliance.

***Board Deliberation***

Mr. Zuroff stated that he had no personal objection to the proposal. Mr. Zuroff stated that the intent of the By-law is clear that you can have up to 150% of max allowed FAR or add an extra 350 square feet. Mr. Zuroff stated it was not considered when the By-law was written that people would come back and add another small addition.

Mr. Zuroff stated he does not think meets requirements for a variance thought felt a modification of a previous special permit that relief requested can be allowed. Mr. Zuroff stated he is not opposed to the proposal and recommended considering the modification of a previous permit.

Mr. Zuroff stated as long as §5.22.3.1 is not modified in anyway and we are not depleting its authority or going against the intent of the By-law is open to allowing for a modification of the previous special permit.

Mr. Hussey agreed and stated the addition is needed. Mr. Hussey stated these small kitchens are typical of an earlier time and need a large space to make a family room, which is what kitchens are used for now.

Mr. Book said for the reasons previously stated, he agreed and doesn't think the variance is warranted in this matter and didn't think the statutory requirements were fully met. Mr. Book stated that Mr. Schuman had made a good argument for a modification of the existing special permit. Mr. Book stated that for all reasons stated and in particular the application's compliance with §9.05, it is worthy of relief.

Mr. Zuroff stated for all reasons stated will allow the requested relief under a modification of a special permit.

Mr. Yanovitch stated for the record they would be modifying case #2794 from July 14, 1986 and modifying §5.22.3.c.

**Unanimous grant of the modification of case #2694 dated July 14, 1986 as requested subject to the conditions stated for the record.**

**29-33 Winthrop Road**- Create a common driveway, construct garage and provide all parking for 29-31 Winthrop Road and 33 Winthrop Road on front lot.

Board Chairman Zuroff called case 2016-0040 forward and reviewed standard hearing procedure.

Mr. Zuroff stated there is new construction as part of the subdivision and the hearing is related to the parking situation and not parking management. Mr. Zuroff stated the building being built on the rear lot is an as-of-right project and all matters related to that house are not under review. Mr. Zuroff stated the hearing is for zoning relief in regards to the parking solution.

Attorney Jeffrey Allen requested to combine the cases 29-31 Winthrop Road and 33 Winthrop Road and waived a reading of the notice.

Attorney Allen stated that if you keep this proposal in context, the plan before you seeking special permit relief, is a better plan than the as-of-right plan that is under construction. Mr. Allen stated that the Planning Board unanimously endorsed the special permit plan. Mr. Allen stated that he thought so for many reasons including the minimization of asphalt by going from 3 driveways to 1 driveway; instead of having all surface level parking there is a great deal of parking under cover. In the special permit plan only three are surface parking. Mr. Allen stated that since the By-law requires 5 cars or more for the driveway to be 20'.

Mr. Allen stated that by putting the five cars at the front they are able to reduce the width of the driveway at the latter half of the driveway, after that 5<sup>th</sup> space. By putting the five spaces for the rear building under a parking structure, we can landscape the top to create more green space. Mr. Allen further stated that they are also able to put the cars in an area where they will have much less of an impact on abutters.

Mr. Allen stated that the Planning Board kept control through the Assistant Director of Regulatory Planning on a final landscaping plan that will include walls fences and so forth in order to protect University Path and the neighbors from interference from lights, car lights. Mr. Allen stated that one the Planning Board sometimes struggled with the parking zoning and other zoning and they didn't like the 20 foot driveway. Mr. Allen stated that they thought it was too much pavement so what we're going to do is keep the 20' because the By-law requires it but on each side of the driveway we will be using pavers for some distance so we will not be reducing the size of the driveway but will be using a different surface along the edge to be more aesthetically pleasing. Mr. Allen stated that if you look at the plan it is self-evident that it is much better than the as-of-right plan and also I would suggest to you if you look at the requirements for special permits this plan is much safer than the as of right plan.

Mr. Allen stated that there are a lot of different plans used and it's important that when we write the Decision that we clear we are using the site plan for September 8, 2016. Mr. Allen stated that the reason that is important if you look on your site plans you'll notice the bump out which causes 5.43 relief among other area. Mr. Allen stated that the reason for that bump out is due to an agreement reached with our neighbor; he wants to put an addition on his house and doing our planning we didn't need that land so made an arrangement with him because it will help him put that addition on his house, but wanted to explain to you why we have a polygon on the plan. Mr. Allen stated that he thought when you look at this case in the context which its presented its really simple in terms of parking, circulation and aesthetics the requested special permit relief produces a plan far superior than the as-of-right plan.

Mr. Zuroff asked about making the entire driveway permeable which would alleviate some of the concerns about run-off.

Mr. Scharf stated that it's a difficult question difficult to answer immediately without doing research. Mr. Scharf stated that in regards to run off we're going to need to comply with DPW, which actually has been involved in the past there is a lot of water running off down to University. Mr. Scharf stated that he has to maintain and deal with the water on the site and DPW will tell us what works or not. Mr. Scharf stated that he didn't know if it's necessary or appropriate and that in previous conversations the slope of the driveway posed a problem in making a permeable driveway effective.

Mr. Zuroff confirmed the permeable pavers are for aesthetic reasons.

Mr. Zuroff stated that another concern made aware of is whether there will be a berm to protect the path.

Mr. Allen stated that there is an existing wall along University Path and they will be enhancing the wall which is part of the landscaping plan that is going to the Assistant Director for Regulatory Planning for approval.

Mr. Duckham (project's architect) described the retaining wall and the difference in grade.

Mr. Zuroff confirmed that the retaining wall to sustain the soil and will be sufficient to stop a car from rolling over it.

Mr. Duckham stated that there will be a fenced placed on top of the retaining wall.

Mr. Allen stated that the fence above the retaining wall will be worked out with the Planning Department

Mr. Yanovitch from the Building Department stated that the Building Code sets forth minimum requirements for vehicle barriers. If the proposal is granted we'll make sure whether it's a guard rail or similar system to make sure vehicles to not end up on the path.

Mr. Allen stated that in the special permit plan, there will be less of the University Path abutting the driveway than the as-of-right plan.

Mr. Zuroff inquired about landscaping or screening along the pathway so that people walking up the stairs on the path don't look as if they're walking straight into a car and asked if there was going to be a visual screening.

Mr. Duckham stated that yes that will be provided as a counterbalancing landscape plan.

Mr. Allen stated that is in the conditions.

Mr. Hussey asked what the shaded area is on the proposed plan.

Mr. Allen stated it is the easement.

Mr. Zuroff stated that since all the parking is on lot that it is required for common ownership.

Mr. Allen stated that this will be done by cross easement and confirmed they will be in perpetuity.

Mr. Allen stated that on Winthrop Road there is a curb cut- will it be reduced?

Mr. Allen stated that the curb cut would be made to comply with zoning which requires 20 feet but that will be the only curb cut.

Mr. Hussey stated that it would have been useful to have a contour plan and an existing condition plan; a contour plan would be helpful in particular as this is a steep lot.

Mr. Zuroff asked for public comment in favor of the applicant.

**Tommy Vitolo** (153 University Road) Mr. Vitolo stated that the By-right plans submitted show a five car tandem driveway between Mr. Scharf's house and my home, as near my property line as could be. Mr. Vitolo stated that the by-right driveway puts the detrimental aesthetics, noise, and emissions extremely close to my home, and the tandem nature of the driveway exacerbates the impacts. Mr. Vitolo stated that the house that Mr. Scharf is building, by right, will dramatically change the way my family will enjoy our home; because the new house is south of ours, on ground about 10' higher than ours, and on the order of 15' taller than ours, our backyard will change from a sunny courtyard to more of a shaded alley. Mr. Vitolo stated that if Mr. Scharf is awarded the parking and setback special permits, he'll sell about 128 square feet of land to my family; enough for us to build a small addition on the back of our modest single family house, squaring off our L-shaped footprint. It's enough for us to rationalize the layout of the first floor, and more importantly, to add a bedroom for my mother-in-law. Mr. Vitolo stated that he and his wife urge the Board to approve the special permits requested by Mr. Scharf to relocate the parking and allow for us to execute the land sale.

**Bradley Coleman** (11 Gardner Road) stated that the development is higher relative to his home and the impact of development will be quiet negative for his family. Mr. Coleman stated that this [special permit proposal] would be a modest improvement over what the approved plan is, as it would move the parking further away from his home. Mr. Coleman asked the Board to consider these negative impacts on his home and life, and urged the Board to approve this small improvement of that otherwise overwhelmingly negative situation.

Mr. Zuroff asked for those in opposition

**Paul Eysie and Steven Beyer** (25 Royal Road) stated they own a single-family Tudor directly across the street. Mr. Eysie stated he understood the building can be done by right and stated parking is important to the developer. Mr. Eysie asked if this was appealable in the Norfolk Superior court.

Mr. Zuroff stated yes.

Mr. Eysie described the tear down of trees on the property to prepare for construction. Mr. Eysie stated that if the board approves, they should seek to mitigate their damages. Mr. Eysie stated that he met with the developer who seemed to be able to work with them but expressed concern regarding what happens after the developer builds and sells. Mr. Eysie stated that he is concerned with the Winthrop Road side. Mr. Eysie stated that the Planning Board recommended a buffer screening. Mr. Eysie stated he had taken the liberty to contact a landscaping company who came by and walked the property of the proposed development. Mr. Eysie stated that the landscape company has put into writing suggestions on how to landscape and screen the property. Mr. Eysie asked if the developer would be amenable to following the landscape plan developed. Mr. Eysie stated that these units will be in big demand if this parking gets approved.

Mr. Eysie stated that he is asking [the Board] to help so when we open our windows, we see a landscaped area. Mr. Eysie stated that he was not sure what was going to happen along the path because the fence of the path is going to be almost at level with the parking. I'm not sure how they're going to do that unless they are going to raise the fence up 6'-8'. Mr. Eysie asked the Board if landscaping and screening conditions are reduced to writing before a decision is rendered, so they can see exactly what they're going to do. Mr. Eysie stated that it's really important to us.

Mr. Zuroff stated that there will be a formal landscaping plan before the final permit is issued.

Mr. Eysie stated that if you render a decision then clock runs for us and that he wants to try and resolve this in a gentleman way because we have to live there. Mr. Eysie stated that he doesn't want to have to file in Norfolk Superior Court and hold everybody up but if he has to, he has to. Mr. Eysie stated that it is important to us that this landscaping plan is somehow put into the decision and if the Board would consider that it would be greatly appreciated. Mr. Eysie stated submitted a landscaping proposal to the Board and Attorney Allen. Mr. Eysie stated that there is a city tree at the corner of Winthrop Road right in front of the path and expressed a concern about the preservation of the tree

Mr. Allen stated that they are going to have a landscape architect and that he thought it is reasonable for our landscape architect to reach out to Harley Garamond and see if they can come together on an agreed upon landscape. Mr. Allen stated that they couldn't get a building permit or certificate of occupancy without a landscaping plan. Mr. Allen stated that they will ask their landscape architect to reach out to these people for whatever section it is and certainly if there are areas we can agree, we'd much rather agree than disagree. Mr. Allen stated that he can't talk trees and bushes.

Mr. Zuroff stated that the public should understand the Board encourages the builders and the public to work with each other; while we can't incorporate your suggestions, we encourage you to talk to each other. Mr. Zuroff stated that ultimately, when the final landscaping plan is finally submitted, I'm sure the departments will consider your concerns.

Mr. Hussey read condition 5: *Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, including all counterbalancing amenities and features intended to minimize the visual impact of vehicle headlights on abutting properties and the fencing/retaining wall between the new access drive and University Path to separate vehicular and pedestrian traffic, subject to review and approval by the Assistant Director for Regulatory Planning.* Mr. Hussey stated that in addition to talking with the developer, you may want to speak with the Assistant Director for Regulatory Planning to make sure she gives you a chance to see the final plan.

Ms. Clark stated she will write up the minutes as clearly as possible so when Ms. Selkoe reviews the final landscape plan, she can see the discussion and understand what was discussed.

Mr. Allen stated that in regards to the street tree, they don't think they will have to widen it to impact the tree; in the worst case, we can widen the driveway in the other direction. Mr. Allen stated they do not anticipate impacting that tree.

Mr. Yanovitch stated Building Department will review any driveway there will be a separate application for that curb cut and when there is a tree in that curb cut that application will go to Tom Brady, Conservation Administrator, and he will issue a setback and will require a minimum setback to the tree; if there are any issues with that it will go to the street tree commission who will vet that.

Mr. Allen stated that Mr. Duckham designed the driveway to not impact the tree.

**Mr. Klein** (27 Winthrop Road), present on behalf of father who resides at 27 Winthrop Road, stated he is not in opposition to the plan and thinks it is significantly superior to the as-of-right plan. Mr. Klein stated that their concern with the plan has to do with the light pollution, views and site coverage with regard to the parking. Mr. Klein stated that in the as-of-right plan, cars are not angled into our house as with the special permit plan, cars turn and the lights go directly into our first floor. Mr. Klein stated that they would like screening to go there. Secondly, Mr. Klein asked if there was some way to make the patio not feel like an additional structure on the property and have a more green and natural feel to blend it in better to the neighborhood. Mr. Klein raised another concern regarding the retaining wall shown on the diagram. Mr. Klein stated that they were not told the dimensions and want to make sure the proposed retaining wall won't go over theirs due to the significant grade.

Mr. Allen stated that everything he stated will be addressed in the landscape plan- everything.

Chairman Zuroff called upon Zoning Coordinator, Ashley Clark, to deliver the findings of the Planning Board. Ms. Clark stated the Planning Board considered both the as-of-right parking solution and the proposed parking solution, which requires zoning relief. Ms. Clark noted that though the Planning Board feels the proposed parking solution creates a congested environment for the front lot, they are not opposed to this proposal because it is functional compared to having five tandem spots on each lot separately. Additionally, the new proposal also provides a counterbalancing amenity in the form of a roof deck on top of the parking structure. The Planning Board would like to see landscape screening to protect abutters from light disturbances.

Therefore, if the Board of Appeals finds that the statutory requirements for relief are met, the Planning Board recommends approval of the site plan prepared by Bruce Bradford, dated 7/27/16, and the architectural plans and site plan by Kent Duckham, dated 9/8/2016 subject to the following conditions.

- 1) Prior to the issuance of a building permit, the applicant shall submit stamped and surveyed site plan showing setbacks for parking structures and floor plans and elevations showing all proposed materials, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 2) Prior to the issuance of a building permit, the applicant shall submit final engineered plans showing grade and sections through University Path, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 3) Prior to the issuance of a building permit, the applicant shall submit a drainage plan, subject to the review and approval of the Department of Public Works Engineering Division.
- 4) Prior to the issuance of a building permit, the applicant shall submit an assurance of permanence of common ownership of the parking structure easement as outlined by the Brookline Zoning By-Law under 'lot'.
- 5) Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, including all counterbalancing amenities and features intended to minimize the visual impact of vehicle headlights on abutting properties and the fencing/retaining wall between the new access drive and University Path to separate vehicular and pedestrian traffic, subject to review and approval by the Assistant Director for Regulatory Planning.
- 6) 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 building elevations and floor plans stamped and signed by a registered architect; and 3) evidence easements and decision have been recorded at the Registry of Deeds.

Board Chairman Zuroff called upon Deputy Building Commissioner Mike Yanovitch to deliver the opinion of the Building Department. Mr. Yanovitch stated if the board does find the proposal meets the criteria for the grant of the requested special permits the Building Department will work with the petitioner and abutters to address their concerns.

### ***Board Deliberation***

Mr. Hussey confirmed the building permits needed are for the driveway and proposed new parking structure. Mr. Hussey felt the proposed parking layout reduces blacktop in the area and the as-of-right parking proposal is unworkable with the tandem spaces; it also requires three curb cuts whereas the proposed makes due with some minor widening. Mr. Hussey stated he would vote in favor of the proposed parking layout.

Mr. Book agreed with Mr. Hussey and stated the proposed parking layout is superior to the as-of-right layout. Mr. Book stated he did not know how you would deal with tandem spaces so subject to the conditions and between the neighbors and Ms. Selkoe a landscape plan will be worked out to everyone's satisfaction. Mr. Book stated he was in favor of granting the requested relief.

Mr. Zuroff stated he was in favor of request and that if the applicant came for relief with the as-of-right plan, we would have had a real problem with it and would have suggested something along the lines of what is being offered in the special permit. Mr. Zuroff confirmed that by increasing the width of the driveway, there is no need for a variance as stated in the Planning Board report. Mr. Zuroff stated for all reasons and with faith that the Building Department and Assistant Director for Regulatory Planning will oversee the landscaping so the public concerns are addressed properly.

Mr. Zuroff stated there is a unanimous grant of relief under **§§ 6.04 and 5.43**.

**Unanimous grant of the relief as requested subject to the conditions stated for the record.**

DRAFT