



**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

# *Town of Brookline*

## *Massachusetts*

Town Hall, 1<sup>st</sup> Floor  
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**Patrick J. Ward, Clerk**

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2014-0030  
LAPLAND ZERO NOMINEE TRUST

Petitioner, Lapland Zero Nominee Trust, applied to the Building Commissioner for permission to construct a garage addition with an additional three garage spaces at 214 Heath Street. The application was denied and an appeal taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed March 19, 2015 at 7:15 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, 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 February 26, 2015 & March 5, 2015 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. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

**214 HEATH ST – CONSTRUCT GARAGE ADDITION WITH THREE ADDITIONAL GARAGE SPACES FOR A TOTAL OF SEVEN SPACES in an S-40, Single-Family, residential district, on March 19, 2015, at 7:15 PM in the 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner: Bernard Chiu; Owner: ALLEN TR ROBERT L) Precinct 15**

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

- 1. Section 4.01; Table of Use Regulations, Use #55**
- 2. Section 5.43; Exceptions to Yard and Setback Regulations**
- 3. Section 5.50; Front Yard Requirements (driveway, Lapland)**
- 4. Section 6.04.5.c.1; Design of All Off-Street Parking Facilities**
- 5. Modification, as necessary, of BOA case #3154, January 7, 1993**

*Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: [www.brooklinema.gov](http://www.brooklinema.gov).*

*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 Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at [rsneirson@brooklinema.gov](mailto:rsneirson@brooklinema.gov).***

**Jesse Geller, Chair  
Christopher Hussey  
Jonathan Book**

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Jonathan Book and Board Members Mark Zuroff and Johanna Schneider. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was Bernard Chiu, owner of the property, architects Raymond Wiese and Allan Wright, The Wiese Company, 28 North Main Street, Sherborn, MA 01770, and landscape architect Wesley Wirth, Thomas Wirth Associates, Inc., 20 North Main Street, Sherborn, MA 01770.

Zoning Board of Appeals Chairman Jonathan Book called the hearing to order at 7:15 p.m. Attorney Allen stated that the Petitioner proposes to construct a second attached garage with three parking spaces, and relocate the existing curb cut on Lapland Street.

Attorney Allen presented to the Board a background of the Petitioner and the proposal, stating the following: 214 Heath Street is a 72,709s.f. lot with frontage on Heath Street, Lapland Street, and Crammond Road. The owner has made interior renovations to modernize the home while complying with all preservation and zoning standards. Mr. Allen stated that the property entrance faces Heath Street and in 1995 the Board of Appeals approved a circular driveway with a curb cut on Lapland Street and Heath Street. An existing three car garage is located almost ten feet below the grade of the home so the resident must walk through unfinished basement or around the home for entry. Mr. Allen stated that the Petitioner would like to relocate the curb cut on Lapland Street, landscape the side yard, and construct an attached three-car garage parallel to Lapland Street. He stated that the front entrance of the property will remain oriented toward Heath Street. Attorney Allen stated that the Petitioner originally submitted a proposal that positioned the garage at an angle due to the grade of the property. In response to comments made by the Planning Board, the Petitioner tucked the garage toward the front of the lot in order to improve vehicle safety and maintain the landscaped and usable open space along Lapland Street and Crammond Road. Mr. Allen noted that the revised proposal includes a garage that is parallel to and setback more than 30ft from Lapland Street. The location of the proposed garage moves vehicular entry away from Heath Street, which experiences heavier traffic, to Lapland Street. This garage location also improves access from the garage itself to the home. This parking design more appropriately fits the topography of the lot and improves vehicle safety.

Raymond Wiese, the Petitioner's architect, having a business address at 28 North Main Street, Sherborn, MA 01770, presented the elevations, discussed the design review process with the

Preservation Commission, and described the topography of the land and the turning radius for vehicles exiting onto Lapland Street. Ray Weise stated that 125 linear feet of the existing circular driveway will be converted to green space and the new parking area that includes 72 linear feet of pavement. Mr. Wiese stated that the proposed massing is reduced because the design follows natural topography of the lot.

Attorney Allen noted that the Planning Board unanimously voted to approve this proposal where the garage provided a safer alternative to the Heath Street entrance, was attractively designed, and would include significant landscaping features along Lapland Street including a wrought iron fence and 2,000s.f. of landscaping in place of the existing curb cut.

Attorney Allen stated that the Petitioner requests relief to modify BOA Case No. 3154 (January 7, 1993) because the Petitioner plans to relocate the curb cut further down onto Lapland Street. Next, Attorney Allen requested relief for the three-car attached garage relative to **Section 5.01, Use #55** of the Zoning By-Law. Mr. Allen stated that a single-family home in the S-40 District may have an accessory private garage with four parking spaces on a 10,000s.f. lot. Here, the Petitioner has an existing three-car garage and the proposal would include a new three-car garage facing Lapland Street. Mr. Allen stated that the design of the garage conforms to the front yard setback under **Section 5.50** of the Zoning By-Law, but a portion of the paved area in front of the garage is within 30ft. of the property line. Thus, the Petitioner requests that the dimensional relief be waived under **Section 6.04.5.c.1** of the Zoning By-Law where the surfaced area will be landscaped and continuously maintained in accordance with the landscaping plan that will be submitted to and approved by the Assistant Director of Regulatory Planning.

Attorney Allen noted that relief is required pursuant to **Sections 5.01,** of the Zoning By-Law whereby a special permit is required under **Section 9.05** of the Zoning By-Law. Mr. Allen commented

that the proposed relief meets the requirements of said **Section 9.05** as follows: (1) the specific site is an appropriate location where the proposed use will remain a single-family dwelling, preserve the existing location of the main house, and is located on a 72,000s.f. lot; (2) there will be no adverse effect on the neighborhood where the orientation of the front entrance will face towards Heath Street and the curb cut will provide a safer vehicular entrance and/or exit for the Petitioner; (3) no nuisance or serious hazard to vehicles or pedestrians exist where the proposed driveway is a safer alternative than Heath Street, the garage will be attached to the main house and tucked into the existing grade, and the open space in the rear and side yard will not be disrupted; (4) adequate and appropriate facilities will be provided for the proposed use; and (5) development will have no significant adverse effect on the supply of housing available for low and moderate income people.

Mr. Allen discussed zoning relief under **Section 5.43** of the Zoning By-Law, where the Board of Appeals may waive the front yard setback requirement if a counterbalancing amenity is provided. Wesley Wirth, the Petitioner's landscape architect having a business address at 20 North Main Street, Sherborn, MA 01770, described the existing streetscape along Lapland Street. Mr. Wirth stated that the landscaping plan includes a wrought iron fence along Lapland Street, which will slope with the natural terrain and incorporate the rolling height change to match architectural elements of the home and add contemporary style. He stated that several landscape beds are also proposed around the paved parking area in front of the proposed garage.

Board of Appeals Member Mark Zuroff inquired whether the new Lapland Street entry would serve as the primary entryway. Mr. Wiese confirmed that the Petitioner intends to use the Lapland Street driveway as the primary entrance.

Zoning Board of Appeals Chairman Book requested clarification of specific relief needed because Planning Board comments appear to include unnecessary citation. Mr. Allen explained that the Building Commissioner had determined that Lapland Street should be evaluated as the side yard in this scenario due to traffic flow and safety. Front yard setback relief is still required because a portion of the proposed parking area is within 30 feet of the front property line. Dimensional relief for this non-conformity is provided in Bylaw Section 6.04.5.c.1. Similarly the three garage bays facing Lapland Street comply with zoning regulations because this is interpreted as the side-yard.

Zoning Board of Appeals Chairman Book asked if there was anyone present who wished to speak in favor of this application. No one spoke in favor of this application.

Zoning Board of Appeals Chairman Book asked if there was anyone present who wished to speak in opposition to this application. No one spoke in opposition to this application.

John Rosa, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board:

1. **Section 5.01** – Table of Use Regulations, Use #55 - On a single-family lot greater than 10,000s.f., a special permit is required to park more than four spaces on the lot.
2. **Section 5.43** – Exceptions to Yard and Setback Regulations
3. **Section 5.50** – Front Yard Requirements (driveway, Lapland) - When the applicant originally submitted their application, **Section 5.43** and **Section 5.50** were applicable because the garage was within the front yard setback. Now that the garage has been further setback and exceeds the 30' setback, these sections are no longer applicable.

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Front Yard Setback – parking area in drive</b>	30 feet	n/a	5.5 feet	Special Permit*

\* Under **Section 6.04.5.c.1** – Design of All Off-Street Parking Facilities, the setback requirements for parking areas can be waived.

4. **Modification, as necessary, of BOA Case #3154, January 7, 1993** - ZBA relief was granted to allow a driveway with one access from Lapland Street and one on Heath Street within the 30' front yard setback. This proposal removes that curb cut from Lapland and part of the driveway.

**Two conditions were required: a landscaping plan and a prohibition on overnight parking within the front yard setback.**

Mr. Rosa stated that the Planning Board unanimously approved the proposal for a three-car attached garage. Mr. Rosa stated that the revised parking layout is more appropriate for the site and the counterbalancing amenities are appropriate. Lastly, Mr. Rosa stated that the Planning Board requested that the final plans indicate the rear pedestrian pathway and side yard retaining wall. Therefore, the Planning Board unanimously recommended approval of the proposed site plan and plan by The Wiese Company, dated 10/18/14, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, indicating all landscaping, dimensions, vehicular areas and materials for the proposed driveway, 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 elevations, indicating all materials, 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 obtain approval by the Director of Transportation and Engineering for the proposed curb cut relocation and new curb cut.
4. 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 building 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.

Chairman Book then called upon John Rosa to deliver the comments of the Building Department. Mr. Rosa stated that the Building Department had no objections to the relief sought under the Petitioner's proposal, that parking configuration is suitable for the site and improves overall vehicular safety, and that if the Board of Appeals finds that the standards for a special permit have been met, the Building Department will work with the Petitioner to ensure compliance with the building code.

Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application. Zoning Board of Appeals Member Mark Zuroff stated support for the design and

commended the Petitioner for restoring the property while maintaining the original character of the home. Mr. Zuroff agreed that the standards for special permit relief under **Section 9.05** of the Zoning By-Law were met. Board of Appeals Member Johanna Schneider echoed support for the design and positioning of the garage. Chairman Book concurred with Board Members Zuroff and Schneider.

The Board then determined, by unanimous vote that the requirements for a special permit from **Sections 5.01, Use #55, 5.50, 6.04.5.c.1** of the Zoning By-Law pursuant to **Sections 5.43, 6.04** and **9.05** of the Zoning By-Law were met and to **Modify Case No. 3154 (January 7, 1993)**. The Board made the following specific findings pursuant to said **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. Development will not have any effect on the supply of housing available for low and moderate income people.

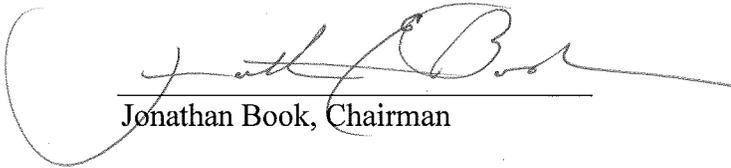
Accordingly, the Board voted unanimously to grant the requested relief and modification of Zoning Board of Appeals Case No. 3154 (1993) subject to the following revised conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, indicating all landscaping (including all counterbalancing amenities), dimensions, vehicular areas and materials for the proposed driveway, as well as the rear pedestrian pathway and side yard retaining wall, 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 elevations, indicating all materials, 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 obtain approval by the Director of Transportation and Engineering for the proposed curb cut relocation and new curb cut.
4. Prior to the issuance of a building permit, the applicant shall submit to the Building

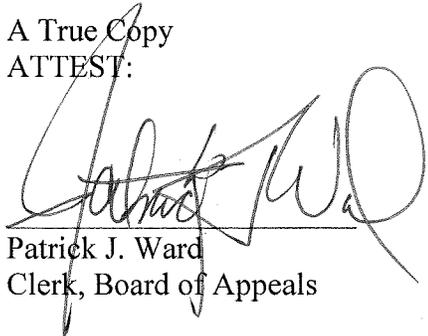
Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

Filing Date: 4/27/15

  
Jonathan Book, Chairman

A True Copy  
ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals

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