



# *Town of Brookline*

## *Massachusetts*

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

Town Hall, 1<sup>st</sup> Floor  
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Brookline, MA 02445-6899  
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2014-0070  
1471 BEACON, LLC

Petitioner, 1471 Beacon, LLC, applied to the Building Commissioner for permission to construct a four-car rear facing garage. 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 February 26, 2015 at 7:00 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 12, 2015 & February 19, 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:

**1471 BEACON ST – CONSTRUCT A FIVE-CAR PARKING AREA TO THE REAR OF THE BUILDING** in an M-2.5, Apartment House residential district on

**February 26, 2015, at 7:00 PM in the 6<sup>th</sup> Floor Selectmen's Hearing Room (Petitioner: ALLEN ROBERT ATTORNEY; Owner: 1471 Beacon, LLC c/o Jeffrey Feurman) Precinct 14**

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

- 1. Section 5.01, Footnote 1: Table of Dimensional Requirements**
- 2. Section 5.09.2.a: Design Review**
- 3. Section 5.43: Exceptions to Yard and Setback Regulations**
- 4. Section 5.50: Front Yard Requirements**
- 5. Section 5.60: Side Yard Requirements**
- 6. Section 5.53: Accessory Structures in the Front Yard**
- 7. Section 5.90: Minimum Landscaped Open Space**
- 8. Section 6.04.12: Design of All Off-Street Parking Facilities**
- 9. Modification, as necessary, of BOA case #2012-0059, December 14, 2012**

*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 Mark G. Zuroff and Board Members Christopher Hussey and Avi Liss. 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 Jeff Feurman, property manager, and architect David O'Sullivan, O'Sullivan Architects, Inc. 580 Main Street, Suite 204, Reading, MA 01867.

Zoning Board of Appeals Chairman Mark G. Zuroff called the hearing to order at 7:00 p.m. Attorney Allen stated that the Petitioner revised the original five-car parking garage to a four-car parking garage with a landscaped roof.

Attorney Allen presented to the Board a background of the Petitioner and the proposal, stating the following: 1471 Beacon Street is situated among a row of 5 townhouses between Marion Street and Fairbanks Street in the in the M-2.5 (Apartment House) District. Mr. Allen stated that the Petitioner purchased the property in February 2012 and pursued special permit and variance relief to restore the historic property after it was severely damaged by an apartment fire in January 2012. He stated that the Petitioner originally requested relief to convert the 10 unit apartment building to 11 units by converting basement space into additional floor area and updating the exterior façade. Mr. Allen stated that the Petitioner now seeks to construct a four-car garage that will be accessed from Beacon Street by a right-of-way alley between the properties located at 1501 and 1515 Beacon Street.

David O'Sullivan, 580 Main Street, Suite 204, Reading, MA 01867 presented the revised parking scheme. Mr. O'Sullivan stated that the garage will have two bays with four parking spaces each measuring 9.6 ft x 16f ft. Mr. O'Sullivan stated that the turning radius is sufficient to avoid crossing the private property on the opposite side of the existing right-of-way easement shared with the Griggs Road and Griggs Terrace neighbors. Finally, he stated that the garage plantings will mitigate water runoff, comply with required landscaped open space, and serve as a visual counterbalancing amenity.

Zoning Board of Appeals Member Christopher Hussey requested additional detail regarding the proximity of the existing retaining wall to the right-of-way and the elevation of the parking surface. Mr. O'Sullivan submitted a full size site plan to the Board of Appeals. Chairman Zuroff inquired about the capacity of the existing drywell to handle water runoff. Mr. Allen stated that the applicant intends to meet with Town Engineer Peter Ditto to discuss drainage. If the relief is approved by the Board of

Appeals, Mr. Allen noted that the Engineering Department must approve the drainage plans prior to the issuance of the building permit.

Board Member Hussey inquired about the dimensions of the right-of-way easement. Mr. Allen stated that alleyways are common along the properties that have frontage along Beacon Street. He stated that this particular alleyway is unique because it ends to the East of the subject property and is located next to a private parking area on Griggs Terrace, which the Petitioner does not have legal access to use.

Chairman Zuroff inquired about maintenance of the alleyway. Mr. Allen stated that the residents maintain and police the private parking area and the Griggs Terrace access point. Mr. Allen stated that the Petitioner reduced the number of parking spaces in order to avoid crossing the alleyway onto the private property of the Griggs Terrace residents. Mr. Allen acknowledged that prior to the demolition and rehabilitation of the fire damaged property, construction vehicles took advantage of the Griggs Terrace access point to park and store construction vehicles. At that time, the Petitioner worked with the Building Department to develop a construction management plan in order to give the Town of Brookline more discretion during the permitting process.

Attorney Allen noted that the Planning Board unanimously voted to 3-2 to approve the revised proposal. Mr. Allen stated that based on feedback from immediate abutters during the first hearing, the Petitioner reduced the number of parking spaces and re-designed the landscaped open space above the garage in order to improve the aesthetic of the alleyway in accordance with **Section 5.09.2.a** of the Zoning By-Law relative to design review.

Attorney Allen stated that the Petitioner requests minimal front and side yard setback relief for the location of the garage in the rear alleyway. Mr. Allen stated that the alley way is considered a street and **Section 5.01, Footnote 1** of the Zoning By-Law requires a garage that faces toward a street to be at least 20 ft. from the lot line. Mr. Allen stated that the existing slope is 0 ft. from the lot line and the

proposed garage entrance facing the alley-way is 5 ft. from the lot line. Next, he stated that the existing side-yard setbacks are 0 ft. from either side yard and are preexisting non-conforming. Mr. Allen stated that the proposed side yard setbacks are 2 ft. and 7.3 ft. from either lot line. He stated that the setback will not increase the non-conformity. Finally, Mr. Allen addressed the landscaped open space requirement. Mr. Allen stated the required landscaped open space is 2,478 s.f., existing landscaped open space is 2,788s.f, and proposed landscaped open space is 2,601s.f. Mr. O'Sullivan stated that the existing hillside is completely unusable and the Petitioner's proposal will flatten the rear yard in order to create open space. Thus, Mr. Allen stated that the Petitioner meets the requirements for landscaped open space requirements under the By-Law.

Attorney Allen noted that relief is required pursuant to **Section 8.02.2** of the Zoning By-Law whereby a special permit is required under **Section 9.05** of the Zoning By-Law to alter the existing structure. 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 legal access to the rear of 1471 Beacon Street was granted in 1896; (2) there will be no adverse effect on the neighborhood where the property has direct access from Beacon Street and is surrounded by mixed use properties with a rear facing garage; (3) no nuisance or serious hazard to vehicles or pedestrians exist where the garage will provide four covered parking space with a garage door that will prohibit vehicles from protruding into the easement; (4) adequate and appropriate facilities will be provided for the proposed use where the proposed landscaped open space and a drainage system will prevent water from freely flowing down the slope of the hill onto neighboring property; and (5) development will not have a 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 dimensional requirements for the front and side-yard setback if a

counterbalancing amenity is provided. Mr. Allen stated that the Petitioner is leveling the slope and creating 2,601 s.f. of landscaped open space above the garage, which will house 4 full-size covered parking spaces.

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

Zoning Board of Appeals Chairman Zuroff asked if there was anyone present who wished to speak in opposition to this application.

Bob Townsner, 6 Griggs Terrace, stated that the Petitioner's contractors repeatedly blocked the right-of-way during demolition/construction of the main structure and illegally used the Griggs Terrace entryway. Similarly, Mr. Townsner stated that residents with access to this parking garage will invariably use Griggs Terrace because it is closer, wider, and less steep than the Beacon Street access point. Mr. Townsner expressed concern that homeowners along Griggs Terrace will bear the burden of enforcing future parking issues relative to this proposal. Furthermore, Mr. Townsner stated that the location of the garage will displace water run off onto Griggs Terrace properties since they sit at a grade level below 1471 Beacon Street.

Chairman Zuroff and Board Member Hussey inquired about a solution to prohibit access to Griggs Terrace altogether. Mr. Townsner stated that the Petitioner has not responded to neighborhood efforts to restrict illegal use of the Griggs Terrace entry point. Chairman Zuroff and Mr. Hussey agreed that a construction management plan will be an important condition to minimize illegal entry during construction if the Board approves relief.

David Eckel, 11 Griggs Terrace, reiterated the Petitioner's history of trespass on Griggs Terrace and the use of Griggs Terrace as a staging area during the demolition and construction of the residences at 1471 Beacon Street. Mr. Eckel submitted a diagram illustrating vehicles crossing over the easement to

turn into the proposed garage. Mr. Eckel stated that if the Petitioner cannot resolve the turning radius, the proposal should not be approved. Greg Lopiccolo, 6 Griggs Terrace, agreed.

Ron Garonzik, 9 Griggs Terrace, stated concern with the orientation of 1471 Beacon Street towards Griggs Terrace and the potential for a parking lot in his front yard.

Chairman Zuroff stated that if the project is approved, the Petitioner will have no legal right to access Griggs Terrace. Mr. Allen stated that the Petitioner intends to provide clean and organized parking in an area that is not clearly delineated. Mr. Allen further stated that these parking spaces will be deeded to individual property owners.

Chairman Zuroff discussed permit conditions. Board of Appeals Member Avi Liss stated that enforcement of the easement has been unfairly placed on the Griggs Terrace property owners. Mr. Liss stated that the Petitioner should consider strategies to alleviate these concerns, specifically the financial cost associated with enforcement. Mr. Liss recommended that the Griggs Terrace residents consider establishing a neighborhood association.

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

1. **Section 5.01, Footnote 1, Table of Dimensional Requirements**: Garage entrances that face the street must be set back at least 20 feet from the street. The alleyway is considered a street under the Zoning By-Law.
2. **Section 5.09.2.a – Design Review**: Any exterior alteration or addition to a building with frontage on Beacon Street, or to a multiple dwelling with four or more units, requires a special permit subject to the design review standards listed under *Section 5.09.4(a-l)*, Community and Environmental Impact and Design Standards. The most relevant sections of these standards are described below:
  - a. **Preservation of Trees and Landscape** – Most of the landscaping at the rear of the building will be removed during construction. The applicant has indicated new landscaping will be planted on the rear terrace and the top of the garage.

b. Relation of Buildings to Environment – The proposed garage will require the removal of several trees at the rear slope of the site.

c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The proposed garage will not be visible from Beacon Street. There is not a similar parking area along this portion of the alley, though the rest of the alley area is used for parking.

d. Open Space – The proposal creates a new landscaped terrace on top of the roof. The proposal, as revised, would remove nearly all landscaped area at the rear of the building.

e. Circulation – The proposed garage will use a 10'-wide easement at the back for access. The garage entrance will be setback from the property line (easement center line) by 5'. The Planning Board is not convinced there will be enough space to back out of the garage without crossing the easement and infringing on the property to the rear.

3. Section 5.43 – Exceptions to Yard and Setback Regulations

4. Section 5.50 – Front Yard Requirements

5. Section 5.53 – Accessory Buildings in the Front Yard Section 5.60 – Side Yard Requirements

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Front Yard Setback</b>	20'	N/A	5'	Special Permit*
<b>Side Yard Setback</b>	16'	N/A	2'	Special Permit*
<b>Side Yard Setback</b>	16'	N/A	7'3"	Special Permit*
<b>Landscaped Open Space</b>	2,478 s.f. 10% of g.f.a.	2,788 s.f.**	1,800 s.f.†	Variance

\* Under *Section 5.43*, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.

\*\* When BOA Case #2012-0059 was approved by the Board of Appeals in 2012, that proposal indicated compliance with landscaped open space, and this calculation (2,788 s.f.) is from those plans. Plans submitted for the current proposal indicate only 2,276 s.f. of existing landscaped open space; the applicant has not indicated the reason for this difference and new deficiency.

† No more than 30% of required landscaped open space may be hardscape, and it is not clear whether the landscaped space over the garage is "ground level," as required by *Section 2.15.3*.

6. Section 5.90 – Minimum Landscaped Open Space

7. Section 6.04.12 – Design of All Off-Street Parking Facilities – This section allows for the Board of Appeals to grant a special permit to waive dimensional requirements for the construction of a garage structure serving an existing residential structure.

8. Modification, as necessary, of BOA Case #2012-0059 December 14, 2012 – If application is approved, a new landscaping plan would need to be submitted.

Mr. Rosa stated that the Planning Board voted 3-2 to recommend approval of the rear garage area.

Mr. Rosa stated that the Planning Board members who voted in support of the proposal recognized the

property improvements and the fact that this was a and a more feasible structure and turning radius. Mr. Rosa stated that the Planning Board members in opposition were concerned with the adverse impact on abutters and the location to of the garage. Therefore, Mr. Rosa stated that the Planning Board voted (3-2) to recommend approval of the plans by O'Sullivan Architects, Inc., dated 2/10/15, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations, indicating all dimensions and materials, including an exterior treatment for the walls other than blank concrete, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to issuance of a building permit, the applicant shall submit a circulation plan for the parking area, subject to the review and approval of the Director of Transportation and Engineering.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan, stamped and signed by a registered landscape architect, indicating substantial counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.
4. Prior to issuance of a building permit, the applicant shall submit a construction management plan for the garage, subject to the review and approval of the Building Commissioner.
5. 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 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 Zuroff next called upon Interim Chief Building Inspector, Michael Yanovitch, to deliver the opinion of the Building Department. Mr. Yanovitch stated that the conditions of **Section 9.05** of the Zoning By-Law exceeded this proposal. Mr. Yanovitch noted that the existing parking along both the Beacon Street and Griggs Terrace right-of-ways are inconsistent and disorganized. Mr. Yanovitch stated that residents currently park illegally in this area, which has required a response from the Town of Brookline Fire, Police, and Building Departments. Unfortunately, Mr. Yanovitch stated that enforcement remains challenging because the parking is located on private property. Mr. Yanovitch stated that prior

improvements to the structure resulted in parking overflow and illegal use of the Griggs Terrace access point, to which the Building Department responded and enforced compliance with permit conditions. Mr. Yanovitch stated that if relief is granted, the Building Department will be vigilant during construction. Furthermore, Mr. Yanovitch stated that the Engineering Department is aware of drainage issues on the sight and must sign off on any drainage plans prior to the issuance of a building permit.

Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application. Board Member Hussey acknowledged that most alleyways along Beacon Street are not accurately delineated. Mr. Hussey stated that a temporary fence should be included in a construction management plan in order to block illegal vehicle access to the rear of 1471 Beacon Street. Board Member Liss stated that the proposal meets the conditions of Section 9.05 of the Zoning By-Law and will demarcate the 1471 Beacon Street parking area from the Griggs Terrace parking area. Mr. Liss stated that enforcement is the primary issue. Chairman Zuroff agreed that the Petitioner met the burden of proving the requirements for a special permit. Mr. Zuroff stated relief should be granted subject to applicant submitting a construction management plan and subject to the condominium documents for 1471 Beacon Street, being amended to include compliance with the following language:

1. The Condominium will not permit parking anywhere on the Right of Way, nor block nor access the easement to Griggs Terrace.
2. The Condominium will set up and make a onetime payment of five thousand dollars (\$5,000.00) into an escrow account for a Parking Relief Fund (the "Fund"). Griggs Terrace residents, who have garages abutting the Right of Way, shall be entitled to receive reimbursement from said Fund for reasonable legal fees associated with the enforcement of provision 1 above. Abutters shall provide copies of such itemized invoices as part of any request for payment from the Fund. The Condominium shall remit payment in full to Griggs Terrace Abutters or its designee within thirty days of receiving the invoice. Any dispute will be resolved by way of arbitration.
3. Once the money in the Fund has been depleted, the Condominium may terminate the escrow account, but the conditions in the above provision 1 remain.

The Board then determined, by unanimous vote that the requirements for a special permits from the application of the provisions of Sections 5.01, Footnote 1, 5.09.2.a, 5.50, 5.53, and 5.60, and 6.04.12 of the Zoning By-Law pursuant to Sections 5.43, 8.02.2 and 9.05 of the Zoning By-Law were met. 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. 2012-0059 subject to the following revised conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations, indicating all dimensions and materials, including an exterior treatment for the walls other than blank concrete, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to issuance of a building permit, the applicant shall submit a circulation plan for the parking area and a storm water management plan, subject to the review and approval of the Director of Transportation and Engineering.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan, stamped and signed by a registered landscape architect, indicating substantial counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.
4. Prior to issuance of a building permit, the applicant shall submit a construction management plan for the garage including protective fencing during construction, subject to the review and approval of the Building Commissioner.
5. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner, the amendment to the condominium documents showing compliance with the terms discussed in this decision.

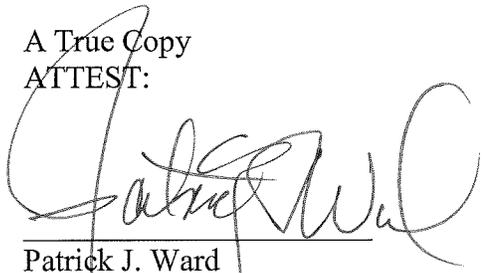
6. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final elevations stamped and signed by 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: 5/4/15

  
Mark G. Zuroff, Chairman

A True Copy  
ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals

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2015 MAY -4 P 1:32