



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

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2015-0044  
OWNER: MOSHE AND VALERIE HASSAN  
78 BONAD ROAD, BROOKLINE, MA

Petitioners, Moshe and Valerie Hasson, applied to the Building Commissioner for a permit to install a 16 foot wide garage door at 78 Bonad Road, which requires a Special Permit because the proposed width exceeds 40% of the front façade of their new house. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed October 29, 2015 at 7:00 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for appeal. Notice of the hearing was mailed to the Petitioner, to their attorney 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 October 15, 2015 and October 22, 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:

**78 BONAD ROAD – INSTALL AN OVERSIZED FRONT FACING GARAGE DOOR in an S-6, Single-Family, residential district, on October 29, 2015, at 7:00 PM in the 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner: HASSON MOSHE & VALERIE; Owner: HASSON MOSHE & VALERIE) Precinct 16**

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

- 1. Section 6.04.14: Design of All Off-Street Parking Facilities**
- 2. Modification, as necessary, of BOA case #2014-0039**

*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 Sneider**, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at [rsneider@brooklinema.gov](mailto:rsneider@brooklinema.gov).*

*Jesse Geller, Chair  
Christopher Hussey  
Jonathan Book*

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jesse Geller, and Board Members Christopher Hussey and Jonathan Book. The case was presented by Attorney Scott C. Gladstone, 1244 Boylston St., Suite 200, Chestnut Hill, Massachusetts 02467. Chairman Jesse Geller called the hearing to order at 7:00 p.m.

Attorney Gladstone presented to the Board a background of the property, stating as follows: On December 2, 2014, the Zoning Board of Appeals issued a special permit in Case No. 2014-0039, approving the subdivision of a 10,000 square foot lot at 78-80 Bonad Road into two 5,000 square foot lots, with the existing home at 80 Bonad Road to remain, except for the elimination of the garage attached to 80 Bonad Road. The 2014 Special Permit also required the

Applicants to receive final design approval from the Assistant Director of Regulatory Planning for any new home to be built on the undeveloped 78 Bonad Road lot, which the Applicants have done with respect to the Plans. Applicants have received a building permit based on the Plans, which do not require any relief under the Zoning By-Law.

Attorney Gladstone next explained that the Petitioners had originally submitted plans to the Building Department showing a 16 foot garage door, which is the standard width (8 feet for each car). Under the Town's Zoning By-Law, the widest garage doors allowed as a matter of right is 13.2 feet. The Building Department granted a building permit for the construction of the new home after Petitioners submitted revised plans showing a garage door that was only 13 feet wide. The box of the garage structure did not change. Petitioners seek relief in order to install the larger 16 foot wide garage door.

Attorney Gladstone next discussed the relief that was needed.

**Section 6.04.14:** Zoning By-Law **Section 6.04.14** provides in pertinent part that “no more than 40% of the width ... of the façade of a building facing a way... may be devoted to the entrance of a garage...”. The front façade of the house facing Bonad Road is 33 feet wide, 40% of which is 13.2 feet. Attorney Gladstone explained that the current plans comply with this limitation for the garage entrance, but the requested modification to widen the garage entrance to 16 feet does not.

Attorney Gladstone went on to explain that Zoning By-Law **Section 6.04.14.c** provides that “The Board of Appeals by special permit may waive the requirements in **Section 6.01.14**, but only to the extent necessary, if it finds that a garage ... accessed by or facing a side or rear yard on a lot is not feasible or would result in substantially less landscaped or usable open space.” Attorney Gladstone pointed out the Planning Board's findings that “A side or rear

facing garage is not feasible for the site without triggering the need for additional setback relief and significantly reducing the amount of usable open space that is currently provided.”

Attorney Gladstone submitted a letter from abutting neighbors on Bonad Road, including elevations showing both a 16 foot wide garage door and a 13 foot wide garage door, evidencing that all of the signatories preferred the 16 foot wide doors being proposed.

**Modification as necessary of BOA case #2014-0039.** Attorney Gladstone explained the prior Special Permit required that the house design be approved by the Assistant Director of Regulatory Planning, which review would now include new doors should they be approved.

Mr. Gladstone argued that the proposal satisfied all of the Special Permit standards under **Section 9.05** of the Zoning By-Law as follows:

- a. The site is an appropriate location for such a use, structure, or condition: The proposed expansion by three feet of the opening in the garage will not increase the footprint of the garage and the garage, in its currently designed location, meets all zoning and other requirements as set out in the Plans. The additional three feet being requested for the garage opening makes the garage placement no more or less appropriate, but it would make the garage much easier and safer to use.
- b. For the reason set forth above, the proposed use will not adversely affect the neighborhood and the neighbors have expressed their approval.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians since the slightly wider garage entrance being requested will make it safer for the vehicles to pull in and out. The currently designed 13 foot wide entrance will require the drivers to enter and exit the garage at an angle, whereas the proposed wider entrance will enable the drivers to pull straight in and out of the garage.
- d. Per a., b. and c. above, adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people as this is part of an already approved single family home in a single family zoning district.

Board Member Christopher Hussey asked what the setbacks were. Attorney Gladstone explained that the building envelope was approved by the Building Department and that the

building was built to the maximum 20 foot front setback wherein the garage door was at the furthest point forward on the lot. Thus, Attorney Gladstone explained, any car parked in the driveway in front of the garage would be within the 20 foot front yard setback. Attorney Gladstone argued that a 13 foot wide garage door would effectively render the garage unusable for two cars, resulting in the user parking a second car on the driveway, within the front yard setback (as is typical for this neighborhood of small lots wherein most people do not have a sufficiently sized garage to accommodate two cars).

In response to a question from Board Chairman Jesse Geller concerning whether the requested 16 foot wide door satisfies the requirement of the By-Law that an increase only be allowed “to the extent necessary,” Attorney Gladstone argued that 8 feet wide per car is standard size for a reason – i.e., that minimum size provides the safest and most comfortable egress and ingress for a typical vehicle. Attorney Gladstone also pointed to the Planning Board’s finding that this garage door is intended to improve vehicular safety, specifically driver sight lines, upon entering and exiting the property.

In sum, Attorney Gladstone argued, the proposed modification to the garage entrance would not increase the footprint of the structure so no additional usable or landscaped open space would be lost. Any other solution, besides the current uncomfortably small entrance to the garage, would require a significant loss of usable or landscaped open space and noted that the proposed 16 foot standard opening is the safest configuration for two cars. Mr. Gladstone represented that the majority of neighbors have no objection to the proposed doors. Accordingly, the special permit test under **Section 6.04.14.c** has been more than satisfied by the proposed amended garage opening.

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

Zoning Board of Appeals Chairman Geller called upon Jay Rosa, Zoning Coordinator for the Town of Brookline, to deliver the findings of the Planning Board and to report on behalf of the Building Department.

**FINDINGS**

**Section 6.04.14 – Design of All Off-Street Parking Facilities**

No more than 40% of the width, or twenty-four feet, whichever is less, of the façade of a building facing a way or within 45 degrees of parallel to a way may be devoted to the entrance of a garage, carport, or covered parking area. The front façade width of the proposed single-family structure is 33 feet.

<b>Dimensional Requirements</b>	<b>Maximum</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Garage Door Width</b>	13.2 feet	n/a	16 feet	Special Permit*

\*Under Zoning By-Law Section 6.04.14.c, The Board of Appeals by special permit may waive the requirements in Section 6.04.14, but only to the extent necessary, if it finds that the garage, carport, or covered parking area, accessed by or facing a side or rear yard on a lot is not feasible or would result in substantially less landscaped or usable open space on the lot.

Mr. Rosa responded that the Planning Board had voted against the proposal 4 to 2. He explained that the opponents felt that the garage structure was not consistent with the smaller size of other garages in the neighborhood and that this being new construction the problem was of the Petitioners’ own making. Mr. Rosa explained that those Planning Board members who were supportive of the Petition cited improved vehicular safety and minimal neighborhood impact. The Planning Board noted that if the submitted plans by Michael McKay, dated 6/23/15, were to be approved by the Board of Appeals that it recommends the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations indicating the garage door width, subject to the review and approval of the Assistance 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) 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. Rosa further reported that the Building Department file already contained a final site plan that is unchanged with this proposal, and therefore suggested that requirement in the proposed conditions should not be necessary.

The Board deliberated on the merits of special permit relief as requested. Board Member Christopher Hussey acknowledged that the By-Law requires the provision of parking for two cars on this site and he expressed his agreement that 16 foot wide doors for two cars should be a minimum requirement since elsewhere the Zoning By-Law requires at least 8 feet width per parking space and so he would approve the Petitioner's request. Board Member Hussey also agreed with Mr. Rosa that there is no need for a condition requiring that a duplicate Site plan be provided.

Board Member Jonathan Book agreed from his own experience with garage doors that eight feet for each car is really necessary in order to accommodate safe use of a garage and he further believed that there is no difference aesthetically between the 13 foot wide door and the proposed 16 foot wide door.

Board Chairman Jesse Geller was concerned that the Petitioners created the under-sized lot and structures to be built on that lot should be sized accordingly. Chairman Geller expressed support for concerns raised by the Planning Board regarding additional zoning relief for this new construction project. Mr. Geller did however believe that in balancing

the relative issues, the scale and impact of this garage door is not the most suitable “test case” to discuss the appropriate level of zoning relief that may be provided for new construction projects, particularly those that are proposed for parcels that have clear design constraints. Chairman Geller also acknowledged that the Petitioners had established a safety reason for needing the 16 foot wide garage door and that safety was the paramount consideration.

The Board voted unanimously that the requirements have been met for the issuance of a special permit under **Sections 6.04.14.c** and **9.05** of the Zoning By-Law, granting relief from the provisions of **Section 6.04.14** of the Zoning By-Law. The Board made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

- The specific site is an appropriate location for such a use, structure, or condition.
- The use as developed will not adversely affect the neighborhood.
- There will be no nuisance or serious hazard to vehicles or pedestrians.
- Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

**Accordingly, the Board voted unanimously to grant special permit relief, subject to the following revised conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans and elevations indicating the garage door width, subject to the review and approval of the Assistance 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) final floor plans and elevations stamped and signed by a registered architect and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK

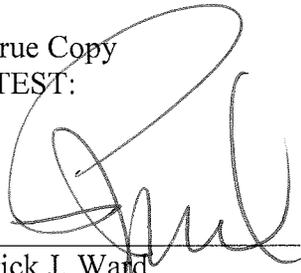
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Unanimous decision of the  
Board of Appeals

Filing Date: 11/13/15

  
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Jesse Geller, Chairman

A True Copy  
ATTEST:

  
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Patrick J. Ward  
Clerk, Board of Appeals