



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0005
JOSHUA AND JESSICA LUTZKER
63 HILLSIDE ROAD, BROOKLINE, MA

Petitioners, Joshua and Jessica Lutzker, applied to the Building Commissioner for permission to install a 50' x 35' parking area. The application was denied and an appeal was 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 31, 2016 at 7:10 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 March 17, 2016 & March 24, 2016 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:

63 HILLSIDE RD – CONSTRUCT A DRIVEWAY AND PARKING COURT IN THE FRONT YARD in an S-15, Single-Family, residential district, on March 31, 2016, at 7:15

**PM in 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Jessica & Joshua Lutzker)
Precinct 14**

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

- 1. Section 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 6.04.5.c.1: Design of All Off-Street Parking Facilities (driveway and parking spaces)**
- 3. Any Additional Relief the Board May find Necessary**

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.

*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 **Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2326; TDD (617)-730-2327; or email at lgellineau@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 Kate Poverman. Deputy Building Commissioner Michael Yanovitch and Zoning Coordinator Jay Rosa were also present. 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 project architects Jen Stephens, Matthew Cunningham Landscape Design LLC, 411 Main Street, Stoneham, MA 02180.

Chairman Zuroff called the hearing to order at 7:15 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the proposal was not supported by the Planning Board. He stated

that the Planning Board surmised that a 49,749 square foot lot should not need relief because Hillside Road is a dead end, backing out should not be an issue. Mr. Allen stated that the placement of the garage is predicated on both recommendations from the Preservation Commission and the conditions on the property.

Mr. Allen stated that the home was built in the 1900s and later a garage which protruded toward Hillside Road. He stated that the placement of the existing garage is predicated on the following: (i) the Preservation Commission suggested that upon removal of the prior garage that the Petitioners rebuild a garage with a breezeway connection to create a more defined streetscape; (ii) the soil conditions on the property make it difficult to construct a garage in the rear of the house without disrupting the structure of the home; and (iii) while there is technically a 0 ft. setback from the front yard, there is a 10 ft. landscaped right of way between the parking court and the street, which is 20 ft. wide, projecting the appearance of a 10 ft. setback.

Project Architect Jen Stephens reviewed project plans stating: The goal of the project is to preserve the character of the home. She stated that the proposed plans pull the footprint back and capture the breezeway. The prior garage was 12 feet forward from the main façade of the house. In an effort to work with the skeleton of the home, it was impractical to place the garage elsewhere. She indicated that the placement of the proposed garage creates a consistent grade between the garage, the home and the streetscape. She stated that pushing the garage further back would require either the relocation of existing sewer lines at the rear of the building, or a complete redesign of the interior floor plan.

She further stated that the property has unsuitable soils, heavy clays, and seasonal groundwater 24 inches from the surface. To mitigate any additional runoff from the added roof area and the parking court, the engineer designed a sizeable infiltration system at the rear. Ms.

Stephens stated that alternative options were not available given the soil on site. The issues with the seasonable ground water, would require Petitioners to lift the back lawn area to accommodate the system. In addition, by keeping the proposed garage at the entrance, the Petitioners are able to create a covered ADA compliant entrance to the mudroom. Ms. Stephens noted that the parking court is nestled within a 10 foot wide planting buffer to screen the parking court from the vantage point. Ms. Stephens then pointed out a grade change which she stated would require entry to the garage at a basement level. She stated that this arrangement is not ideal for handicap accessibility.

Board Member Hussey inquired about building the garage over the sewer line which he noted is 3'4 feet below grade. Ms. Stephens stated that the property does not have adequate cover and reiterated that the determining factor of the location of the garage is the issue with the soils. She also stated that keeping the parking court and garage as proposed, preserves more open space. Ms. Stephens stated that Hillside is unique for a dead end street because it dead ends at the property line requiring residents to back into their neighbor's driveways. She stated that the proposed project is consistent with properties in the immediate context.

Chair Zuroff and Board Member Poverman questioned whether the material used would be permeable. Ms. Stephens proposed cobble aprons at the curb cut and the garage doors with minimal use of asphalt.

Chairman Zuroff then questioned the dimensions of the parking court. He indicated that the street is generally quiet and therefore the proposal may be excessive. Ms. Stephens noted that the dimensions as proposed allow for turnaround space. Mr. Zuroff indicated that the dimensions are generous and he would like to see the dimensions scaled back. Attorney Allen stated that the Petitioners are agreeable to scaling the dimensions.

Mr. Allen then stated that the Petitioners come before the Board seeking front yard setback relief under **Section 5.43** of the Zoning By-Law, which allows the Board of Appeals to waive front yard setback requirements if counterbalancing amenities are provided. He stated that the Petitioners incorporated the Preservation Commission's suggestions into the current proposal. Attorney Allen also noted that neighbors were concerned about storm water so the Petitioners worked with Peter Ditto, Director of Engineering and Transportation, to ensure minimal impact on the neighbors. Furthermore, a substantial landscaping plan has been provide to buffer the parking court.

Attorney Allen discussed special permit relief under **Section 9.05** of the Zoning By-Law arguing: (1) the specific site is an appropriate location where there are only four (4) addresses on the street, two of which have parking courts within the front yard setbacks and the other two are proposing them. Additionally, 381 Warren Street, which fronts on Hillside also has a parking court that encroaches on the front yard setback; (2) there will be no adverse effect on the neighborhood where the use will remain the same and the owners have reached out to immediate neighbors who has expressed their support of the proposal. Additionally, the counterbalancing amenities, the revised landscape plan, will obscure a significant portion of the driveway which is only viewed by neighbors across the street; (3) there will be no nuisance or serious hazard to vehicles or pedestrians where an expanded parking area will eliminate the need for vehicles to back out of a long driveway and onto Hillside Road. A parking court would curtail that issue by allowing for internal turning and would be safer for pedestrians traveling on foot; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use including the stormwater management plan; and (5) the development will have no effect on the supply on housing available for low and moderate income people.

Chairman Zuroff asked whether anyone was present in support of, or in opposition to the proposed project.

A neighbor appeared to inquire about the upkeep of the right of way. Chairman Zuroff indicated that the right of way inquiry is a non-zoning matter but may be addressed between neighbors.

Mr. Rosa delivered the findings for the Planning Board:

FINDINGS:

Section 5.43 – Exceptions to yard and Setback Regulations

Section 6.04.5.c.1 – Design of All Off-Street Parking Facilities (driveway and parking spaces)

Dimensional Requirements	Required	Existing	Proposed	Relief Required
Front Yard Setback (Parking)	25 feet	Approx. 28 feet	0 feet	Special Permit *

** Under Section 5.43, the Board of Appeals may waive by special permit yard and/or setback requirements if counterbalancing amenity is provided.*

Mr. Rosa stated that the Planning Board does not support the Petitioners' request to install an expanded front-yard parking area in front of the new two car parking garage. They stated that they do not favor parking in the front yard. Mr. Rosa indicated that he has been to the site and consistently saw parking courts as a matter of aesthetics and functionality. He stated that the Board felt that the parking area results in impermeable surface replacing open space and existing trees, and at the time, no counterbalancing amenities had been offered to off-set the relief requested. Therefore, the Planning Board recommended denial of the site plan submitted by Metrowest Engineering, Inc., dated 11/6/2015.

Mr. Zuroff asked Mr. Rosa to opine on recommendations for the dimensions of the parking court. Mr. Rosa indicated standard turning radius between 20 feet and 25 feet.

Mr. Yanovich stated that the plans reflect a basketball area which is not allowed under the Zoning By-Law. He then noted that 45 degrees for one turning space is allowed by right.

Therefore, the only part of the proposal requiring relief is the bottom right corner of the parking court. Mr. Yanovitch then suggested that final approval be conditioned on approval of the retention system by Peter Ditto. Mr. Yanovich stated that if the Board finds for this proposal, the Building Department will work with the Petitioners to ensure compliance.

During deliberation, Hussey inquired about various dimensions. He stated that the proposal meets the conditions for a special permit. He further stated that he is not sure why the Planning Board was adverse to the proposal and stated his support of a reduction of the parking area to allow for more green space. Ms. Poverman stated that she is supportive of this proposal but would also require that the dimensions of the parking court be scaled back and that a condition be imposed requiring permeable paving.

Chairman Zuroff stated that he is in agreement with the comments of both Board Member Hussey and Board Member Poverman. He stated that he would like a reduction in the size of the parking court. He stated that he is favorable of the dimensional relief but would like to preserve the green space on the lot. Chairman Zuroff also conditioned his grant of the proposal on the use of permeable surface. Mr. Zuroff indicated that he would like the Petitioners to go as close to the as of right option as possible.

The Board then determined, by unanimous vote that the requirements for a special permit for **Section 6.04.5.c.1** of the Zoning By-Law pursuant to **Sections 5.43** 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 no adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.

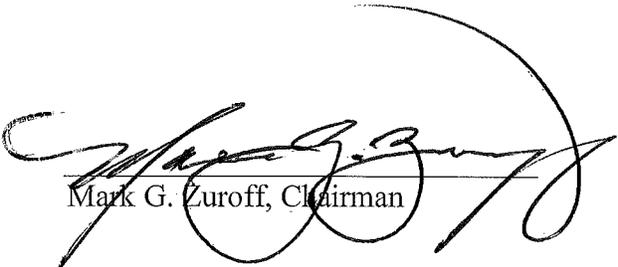
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will not have any effect on the supply of housing available for low and moderate income people.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following revised conditions:

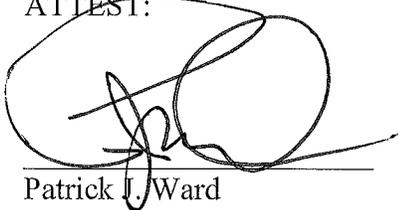
1. Prior to the issuance of a building permit, the applicant shall submit final site plan reducing the size of the driveway area, showing permeable paving, removal of the basketball court, floor plans and elevations subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities 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 Engineering and Transportation Director.
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 floor plans and 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: 5/23/16


Mark G. Zuroff, Chairman

A True Copy
ATTEST:


Patrick J. Ward

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TOWN CLERK
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