



**BOARD OF APPEALS**  
Jesse Geller, Co-Chair  
Jonathan Book, Co-Chair  
Christopher Hussey

RECEIVED  
TOWN OF BROOKLINE  
REGISTRARS OF VOTERS

16 JUL 21 AM 11:54

# *Town of Brookline*

## *Massachusetts*

Town Hall, 1<sup>st</sup> 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. 2016-0022

**Owner: 209 Harvard Street, LLC**

Petitioner, 209 Harvard Street, LLC, applied to the Building Commissioner for permission to rent parking spaces for residential parking, located at 209 Harvard Street. 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board and fixed June 16, 2016 at 7:00 p.m. in the Selectmen's Hearing Room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to their attorney, 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 June 2 and June 9, 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:

**209 HARVARD ST – REISSUE PREVIOUSLY GRANTED SPECIAL PERMIT RELIEF TO MAINTAIN THE RENTAL OF OPEN AIR PARKING SPACES FOR RESIDENTIAL PARKING, in an L-1.0, Local Business, zoning district, on June 16, 2016, at 7:00 PM in 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner/Owner: 209 Harvard Street LLC) Precinct 7**

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 4.07, Table of Use Regulations, Use #22**
- 2. Modify BOA #2260B, December 2, 1999**

*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*

**Publish: June 2, 2016 & June 9, 2016**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Mark G. Zuroff and Board Members, Kate Poverman and Christopher Hussey. The case was presented by the attorney for the petitioner, Cameron Merrill, of Merrill & McGearry, 100 State Street, Suite 200, Boston, Massachusetts, 02109. Mr. Zuroff called the meeting to order at approximately 7:00 p.m.

Mr. Merrill described 209 Harvard Street as 209 Harvard Street a 5 story medical office building. The existing building has 4 floors of office space, a first floor level with parking for 18 cars, a basement level with parking for 21 cars and a rear outside parking area for 36 cars, totaling 75 spaces. Since the last Board of Appeals approval (case #2260A), the approved plans showing 26 parking spaces in the outside parking area has been increased by 10 spaces which are located along the driveway. Also, a dumpster has been installed which partially blocks the entrance to the basement parking level.

Attorney Merrill stated that in 1999 the Board of Appeals granted approval for the owner, at the time, to use the parking for both residential parking and commercial parking. The use was conditioned on a sunset provision, relocation of a dumpster and implementation of temporary parking on the driveway. The prior special permit has since expired.

Attorney Merrill said the petitioner is proposing the same use that has been authorized for nearly 35 years, however he requested the Board remove the sunset provision. Attorney Merrill argued that the Building Department along with the Selectmen's Office are well equipped to monitor and enforce the parking regulations imposed by the Zoning By-Laws and the Open Air Parking License requirements without the need to reappear before the Zoning Board of Appeals.

The Chairman asked if anyone in attendance would like to speak, either in favor of or in opposition to the petition. There were no members of the public present to speak either in favor of or against the application. Prior to the meeting, the Petitioner submitted numerous letters in support of the proposed use.

The Chairman called upon Jay Rosa to deliver the comments of the Planning Board.

## **FINDINGS**

### **1. Modification of Board of Appeals cases 2260 (1 December 1978) and 2260A (30 April 1980)**

Mr. Rosa said twenty-one years have lapsed since the dual use of this parking lot was approved. The original approval had a time limit of 2 years which was extended another 3 years in the subsequent case. The 3 year renewal is long past and in order to continue to rent spaces overnight and acquire a license from the Board of Selectmen, the previous decisions need to be modified to extend or remove the time limits. A modification would also be needed to allow 65 spaces as dual use, rather than the 55 originally approved. Mr. Rosa reported the Planning Department is supportive of this proposal to allow neighboring residents the opportunity to park at the property. The Planning Department also has no objection to the removal of the sunset provision. Mr. Rosa indicated the Planning Department was unaware of any complaints regarding this property.

**Therefore, the Planning Department recommends approval of proposed dual-use parking, subject to the following conditions:**

1. Petitioner shall submit to the Building Commissioner, annually, a list of addresses and registration numbers of tenants' cars parking in any of the 63 available on site parking spaces overnight in compliance with Use #22.
2. Renters of the spaces shall live within a 1,400 foot radius of the Premises.
3. Petitioner shall maintain a valid Open Air Parking License with the Board of Selectman.
4. The Petitioner shall submit to the Building Commissioner for review and approval to ensure confirmation to the Board of Appeals decision: 1) a final parking and site layout

plan; 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman called upon Michael Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. Mr. Yanovitch said the Building Department has no objection to the requested relief. He said the relief could be issued by special permit and, if relief were to be granted, the Building Department would ensure compliance with the Building Code as well as any conditions of the grant.

After deliberating on the merits of the request for special permit relief, the Board voted unanimously that the requirements have been met for the issuance of a special permit and made the following specific findings pursuant to 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.

**Accordingly, the Board voted unanimously to grant the requested relief, and removal of the sunset provision, subject to the following conditions:**

1. Petitioner shall submit to the Building Commissioner, annually, a list of addresses and registration numbers of tenants' cars parking in any of the 63 available on site parking spaces overnight in compliance with Use #22.
2. Renters of the spaces shall live within a 1,400 foot radius of the Premises.
3. Petitioner shall maintain a valid Open Air Parking License with the Board of Selectman.

4. The Petitioner shall submit to the Building Commissioner for review and approval to ensure confirmation to the Board of Appeals decision: 1) a final parking and site layout plan; 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of The Board of Appeals.



Mark G. Zuffo, Chairman

Filing Date: \_\_\_\_\_

A True Copy  
ATTEST:

\_\_\_\_\_  
Patrick J. Ward  
Clerk, Board of Appeals