



**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. 2015-0051  
OWNER: GREGORY & JESSICA MASON  
33 LEICESTER STREET, BROOKLINE, MA

Petitioners, Gregory and Jessica Mason, applied to the Building Commissioner for permission to construct a three-car garage within the required side yard at 33 Leicester 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 of Appeals, and fixed December 17, 2015 at 7:05 p.m. in the Selectmen's Hearing Room as the time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, 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 December 3, 2015 and December 10, 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:

**33 LEICESTER ST – CONSTRUCT A THREE-CAR GARAGE, INSTALL A SURFACE PLAY COURT, AND RECONFIGURE THE DRIVEWAY in an S-15, Single-Family, residential district, on**

**December 17, 2015, at 7:05 PM in the 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner: Stephanie Horowitz; Owner: Gregory and Jessica Mason) Precinct 14**

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

- 1. Section 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.53: Accessory Buildings in the Front Yard (garage)**
- 3. Section 5.60: Side Yard Requirements (play court)**
- 4. Section 5.63: Accessory Building Structures in the Side Yard (garage)**
- 5. Section 6.04.5.c.1: Design of All Off-Street Parking Facilities (driveway and parking space)**
- 6. Section 6.04.14: Design of All Off-Street Parking Facilities**
- 7. Section 8.02.2: Alteration or Extension**
- 8. 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](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, this Board held a public hearing. Present at the hearing was Board Chairman Mark G. Zuroff and Board Members Kate Poverman and

Jonathan Book. The project architect, Stephanie Horowitz of ZeroEnergy Design located at 156 Milk Street in Boston, MA, presented project details to the Board on the Petitioner's behalf. Ms. Horowitz stated that the property owners purchased this single-family home in the spring of 2015. Since that time they have engaged in a variety of property improvements with the intent to bring the property "through the next century." Ongoing property improvements include renovation of both interior and exterior structural features, reconfiguration of the existing driveway, installation of various landscaped features, and the installation of a swimming pool at the rear and a play court at the side. Ms. Horowitz further stated that the Petitioner intends to remove an existing two-car garage located approximately ten feet from the front property line along Leicester Street and replace this structure with an entirely new three-car garage. Ms. Horowitz confirmed that the 33 Leicester Street property is located within the Fisher Hill National Historic District and the proposed garage demolition received proper approval from the Brookline Preservation Commission.

Ms. Horowitz stated that the proposed garage will be located 25 feet from the front lot line, effectively eliminating the need for vehicles to exit the property by backing out to Leicester Street. Ms. Horowitz explained that this modification is largely intended to improve vehicular safety because the subject property is located in close proximity to a curve on Leicester Street that limits driver visibility. The new garage footprint infringes on the required side-yard setback and will be located approximately 1.8 feet from the side lot line to the west at the closest point. Additionally, the front-facing garage doors exceed 24 feet in total width. Mr. Horowitz confirmed that the Petitioner is seeking special permit relief for both of these conditions and is proposing the installation of dense evergreen hedges along the side property line in question as a counterbalancing amenity for this dimensional relief pursuant to Zoning By-Law Section 5.43.

Board Member Kate Poverman questioned why the garage door width must exceed the established 24 foot maximum. Ms. Horowitz stated that standard garage bays are 8 feet in width in order to accommodate modern vehicles. The proposed two-car bay is 16 feet in width and the single bay is 8 feet in width. The Zoning By-Law incorporates the pillar located between these two bays when calculating to total door width resulting in a 26 foot wide "door". Ms. Horowitz also stated that a three-car bay totaling 24 feet in width is not as practical and is inconsistent with the character of the neighborhood. Ms. Horowitz also noted that the abutting property at 23 Leicester Street maintains a similarly sized three-car garage with a comparable front-yard setback.

Board Member Book questioned if the Petitioner communicated plans for this garage replacement with this abutting resident at 23 Leicester Street. Ms. Horowitz stated that written communication detailing the garage proposal was mailed to this abutting resident but no responding comment in favor or in opposition was received. Ms. Horowitz did confirm that these two detached garages will be the most proximate structures on these respective properties.

Board Chairman Zuroff called for public comment in favor of, or in opposition to, the Petitioner's proposal.

Gill Fishman of 79 Holland Road stated that he is a member of the Fisher Hill Neighborhood Association. Mr. Fishman initially had concerns about this project but reviewed submitted plans and is satisfied with the Petitioner's solution to improve the front garage in a manner that maintains vehicular safety and design consistency.

No members of the public spoke in opposition of the proposal.

Mr. Zuroff requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board and the Building Department.

**FINDINGS**

**Section 4.01 – Table of Use Regulations, Accessory Use #62**

A special permit is required for the proposed play court in a required side yard unless it is screened from the side lot line by a strip of land at least four feet wide, densely planted with shrubs or trees which are of a type that may be expected to form a year-round dense screen at least 10 feet high within three years.

**Section 5.60 – Side Yard Requirements**

**Section 5.43 – Exceptions to Yard and Setback Regulations**

**Section 5.53 – Accessory Buildings in Front Yards (garage)**

**Section 5.63 – Accessory Buildings or Structures in Side Yards (garage)**

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

**Section 6.04.14 – Design of All Off-Street Parking Facilities (garage door width)**

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief Required</b>
<b>Front-Yard Setback (garage)</b>	25 feet	10 feet	25 feet	Complies
<b>Side-Yard Setback (garage)</b>	15 feet	6.5 feet	1.8 feet	<b>Special Permit*</b>
<b>Side-Yard Setback (play court)</b>	15 feet	N/A	5.5 feet	Complies – <i>dense screening</i>
<b>Garage Door Width</b>	24 feet	Approx. 16 feet	26 feet	<b>Special Permit**</b>
<b>Gross Floor Area</b>	7,327.25 sf 100%	6,556 sf 89.5%	6,736 sf 91.9%	Complies

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

*\*\*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.*

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter the pre-existing non-conforming structure.

Mr. Rosa stated that The Planning Board unanimously supported this proposed three-car garage and play court. From a design standpoint, the garage location complies with front setback requirements and is comparable in size to existing accessory buildings within the immediate neighborhood. Mr. Rosa noted that the Planning Board did request that garage window and roof

designs be revised to more appropriately complement the style of the primary structure. The Board requested that revised plans come back before the Planning Board for final design review if approved by the ZBA.

Therefore the Planning Board recommended approval of the three car garage submitted by Stephanie T. Horowitz, dated 11/9/2015, and the site plan by John R. Hamel, revised 12/8/2015, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, without the parking space in the circular garage, and garage floor plans, subject to the review and approval of the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit final garage elevations that incorporate design elements that are more complementary of the style of the primary structure, subject to the review and approval of the Planning Board.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities and buffer screening for the play court, subject to the review and approval of the Assistant Director for Regulatory Planning.
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 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 stated that the Building Department also has no objection to the relief as requested. The petitioner has proposed dense vegetation to screen the play court area in accordance with Accessory Use #62 requirements as well as various additional landscape features to serve as counterbalancing amenities for the requested setback relief. Mr. Rosa also noted that the Building Department also does not object to the proposed front-facing configuration of the three-car garage.

The Board deliberated on the merits of special permit relief as requested. Board Chairman Zuroff stated that the requested side-yard setback and garage door width relief are generally modest. Mr. Zuroff felt that garage location is appropriate for the neighborhood. Mr. Zuroff also stated that he believed that the proposed garage appropriately satisfies the standards for the grant of a special permit, pursuant to By-Law Section 9.05. Mr. Zuroff also supported the Planning Boards request for final design review of the garage façade and roof layout.

Board Member Book concurred with Mr. Zuroff's comments and added that the garage is attractive and results in modest impact due to the large size of the lot. Mr. Book also agreed that the project complies with By-Law Section 9.05 and 6.04.14.c requirements for the issuance of a special permit.

Board Member Poverman also supported this request for zoning relief, subject to conditions stated for the record.

The Board voted unanimously that the requirements have been met for the issuance of a special permit under Sections 5.43, 6.04.14.c, and 9.05 of the Zoning By-Law, granting relief from the provisions of Sections 5.60, 5.63, 6.04.14, and 8.02.2 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.

- The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people


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

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, without the parking space in the circular garage, and garage floor plans, subject to the review and approval of the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit final garage elevations that incorporate design elements that are more complementary of the style of the primary structure, subject to the review and approval of the Planning Board.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities and buffer screening for the play court, subject to the review and approval of the Assistant Director for Regulatory Planning.
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 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.

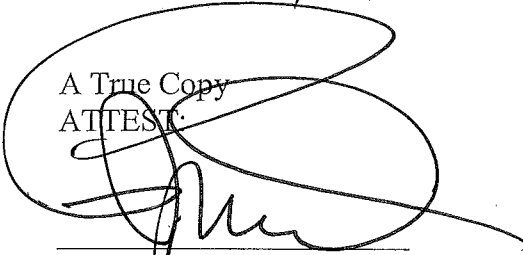
Unanimous decision of the

Board of Appeals

Filing Date: 12/30/15

  
Mark G. Zuroff, Chairman

A True Copy  
ATTEST:

  
Patrick V. Ward  
Clerk, Board of Appeals

2015 DEC 30 A 10:15

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK