



BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

Town of Brookline

Massachusetts

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0007
OWNER: HAMILTON PARK TOWERS, LLC
175 FREEMAN STREET, BROOKLINE, MA

Petitioner, 175 Freeman Street, LLC, applied to the Building Commissioner to modify previous Board of Appeals decisions numbered 2010-0020 and 2011-0041 in order to continue to rent twenty-eight (28) underground parking spaces located at 175 Freeman Street to surrounding area residents. The request for modification 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 March 3, 2016 at 7:15 p.m. in the Selectmen's Hearing Room as the time and place of a hearing for the modification. 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 February 18, 2016 and February 25, 2016 in the Brookline

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:

175 FREEMAN ST – REQUEST TO CONTINUE THE UTILIZATION OF EXCESS PARKING IN UNDERGROUND GARAGE FOR NON-RESIDENT USE. in an M-2.0, Apartment House, zoning district, on March 3, 2016, at 7:15 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner/Owner: HAMILTON PARK TOWERS LLC) *Precinct 2*

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. Modify Board of Appeals Case # 2010-0020, August 12, 2010 and #2011-0041, September 8, 2011**

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 **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.*

*Jesse Geller, Chair
Christopher Hussey
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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Board Chairman Jesse Geller and Board Members Kate Poverman and Christopher Hussey. The project engineer, Frederick Lebow, of FSL Associates located at 358 Chestnut Hill Avenue, Boston MA, presented project details to the Board on the Petitioner’s behalf. Mr. Lebow introduced Carl Valeri, Chief Operating Officer of the Hamilton Company, and provided a brief permit history of the subject property, which is commonly referred to as Dexter Park. Mr. Lebow stated that twenty-eight underground parking spaces are available for rental to residents of the immediate neighborhood surrounding 175 Freeman Street. A special

permit to rent these parking spaces was initially granted by the Board of Appeals in 2010, in accordance with Zoning By-Law **Section 4.07, Table of Use Regulations, use #22**, with the condition that this zoning relief must be renewed by the Board within one year. Mr. Lebow confirmed that various impact mitigation features including the installation of a sound wall and parking signs were incorporated at the site based on the recommendation of community members and the Planning Board. Accordingly, the Board of Appeals re-evaluated the impact of rental parking spaces in 2011 and unanimously voted to extend the special permit for an additional eighteen months.

Mr. Lebow further stated that area residents often utilize this underground parking during winter months and are required to renew parking agreements on an annual basis. Mr. Lebow stated that the majority of area residents have no objection to this parking arrangement as a result of site improvements made by the Petitioner. Mr. Lebow confirmed that granted special permit relief was again extended by the Board of Appeals for an additional five-year period in 2013.

Mr. Lebow requested that the Board modify these prior decisions to eliminate the need for further special permit renewal so the Petitioner will not be required to come before the Board on a regular basis to extend use-based zoning relief required to rent the parking spaces in question to non-residents.

Board Member Kate Poverman requested that the Petitioner describe the current availability of surface and garage parking. Mr. Valeri stated that 309 surface and garage parking spaces are available, all of which were constructed prior to the Hamilton Company purchasing the property in 2009. Mr. Valeri confirmed that there is a surplus of parking spaces and only underground spaces are available for rent to surrounding area residents.

Mr. Lebow stated that there has been limited recent public complaint of this rental parking and he noted that prior public complaint resulted in a more detailed Board of Selectmen review of the initial parking proposal as well as the aforementioned installation of various noise and impact mitigation features.

Board Member Christopher Hussey questioned why the Petitioner is seeking further extension prior to the expiration of the five-year period of granted zoning relief. Mr. Lebow restated that ongoing Board renewal of this relief is burdensome and perhaps redundant because the Building Department is required to review compliance with imposed special permit conditions on an annual basis.

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

No members of the public commented in favor of, or in opposition to, the Petitioner's request for modification.

Board Chairman Geller requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board. Mr. Rosa stated that the Planning Board did not hear this request for further extension but the parking layout has not been altered from the prior iteration that was supported by the Planning Board. Mr. Rosa confirmed that various impact mitigation features have been incorporated and the Town is not aware of any formal complaint regarding the rental parking since 2013. Mr. Rosa agreed that it is atypical to eliminate sunset provisions when imposed as a condition associated with the grant of a special permit unless annual licensing review can provide replacement town oversight. Mr. Rosa confirmed that this underground rental parking does not require an annual open air parking license from the Board of Selectmen.

Board Chairman Geller requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the Building Department does have enforcement authority to ensure that the Petitioner complies with all prior imposed conditions including annual review of parking rental details. Mr. Yanovitch further stated that the Town is moving toward a more cohesive transportation demand management evaluation process however any improved Town practices on this matter would not apply to the 175 Freeman Street rental parking. Mr. Yanovitch concluded his comments by stating that the Building Department is confident that previously imposed special permit conditions, which will not be altered by this modification request, effectively maintain Town oversight to ensure that all renters of underground parking spaces live within a 1,400 buffer around the subject property.

The Board deliberated on the merits of the Petitioner's request for modification. Board Chairman Geller confirmed that the Petitioner request is limited to eliminating previously imposed special permit Condition #4, being a limitation of the special permit term that may only be extended following a unanimous vote of the Board of Appeals. Mr. Geller stated that he is not opposed to this request but cautioned that enforcement may be a challenge and the burden is now shifted to the Building Department.

Board Members Hussey and Poverman concurred with Mr. Geller's comments and unanimously supported the Petitioner's request to so modify prior Board of Appeals decisions numbered 2010-0020 and 2011-0041.

Accordingly, the Board voted unanimously to modify prior Board of Appeals decisions permitting the rental of twenty-eight underground parking spaces at 175

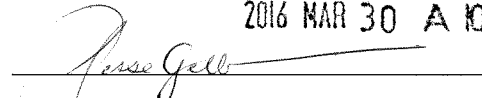
Freeman Street. Modifications include the elimination of previously imposed Condition #4 while maintaining all other imposed conditions to include:

1. Prior to the rental of any spaces, the applicant shall submit a final parking and site layout plan, including the demarcation of at least 10 parking spaces on site for guests of Dexter Park residents, any traffic control devices (gates signage, speed bumps, etc.), the loading dock areas, and the drop-off area off Freeman Street, subject to review and approval of the Assistant Director for Regulatory Planning.
2. The Petitioner shall submit to the Building Commissioner annually, a list of addresses and registration numbers of clients utilizing any of the 28 available spaces in the garage to insure compliance with use #22. The Petitioner shall provide evidence that residency was established by presentation of proof by those wishing to rent spaces.
3. Renters of the available spaces shall live within a 1400 foot radius of 175 Freeman Street.
4. The Petitioner shall provide signage on both sides of the garage door directing that all pedestrians not use the garage doors for entrance/exit; that all entrance/exit be through the main lobby.
5. Prior to the rental of any spaces, the applicant shall submit to the Building Commissioner for review and approval to ensure conformance to the Board of Appeals decision; 1) a final parking and site plan layout and 2) evidence that the Board of Appeals decision has been recorded at the registry of Deeds.

**Unanimous decision of the
Board of Appeals**

RECEIVED
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TOWN CLERK

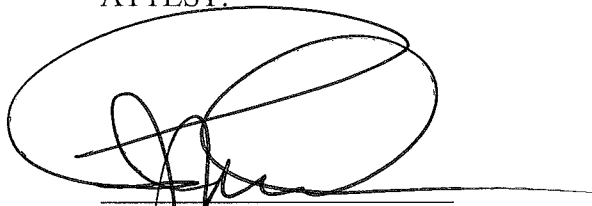
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Jesse Geller, Chairman

Filing Date: 3/30/16
A True Copy

ATTEST:



Patrick J. Ward

Clerk, Board of Appeals