



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. 2016-0003
60 HILLSIDE ROAD, BROOKLINE, MA

Petitioner, Farhad Nanji, applied to the Building Commissioner for permission to install a surface parking court within the required front yard. 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 May 5, 2016 at 7:15 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 April 21, 2016 & April 28, 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: **60 HILLSIDE RD – INSTALL PARKING COURT IN FRONT YARD in an S-40, Single Family, residential district, on May 5, 2016, at 7:15 PM in Town Hall Room 111 (Petitioner/Owner: KENNETH B. VONA) *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**
- 3. Any Additional relief th Board finds 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 Jesse Geller and Board Members Johanna Schneider and Stephen Chiumenti. Zoning Coordinator Jay Rosa was present on behalf of the Planning Department and the Building Department. 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 the Petitioner, Farhad Nanji.

Chairman Geller called the hearing to order and Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the property is situated on a 45,000 square foot lot located in an S-40 district. The immediate neighborhood includes single-family lots within the S-15 district and larger single-family lots within the S-40 district. He stated that the Petitioner built the exiting home on the property in 2011. The proposal is to install a 40 x 58 parking court to allow two vehicles to park and to give trucks and vehicles the ability to circle around to exit. The proposed parking court

will have rustic stone paving surrounded by a decorative granite border. There will be a 4 foot brick and cast stone retaining wall and the front-facing portion of the wall will be screened by evergreen hedges and flowering shrubs.

Mr. Allen stated that the Planning Board unanimously denied the proposal on the premise that the house could have been built 8 feet further away from the front lot line. He indicated that the house could not be built 8 feet away from the front lot line due to existing soil conditions on the property including unsuitable groundwater, heavy clay and seasonable ground water that is only 24 inches below the surface. Mr. Allen also stated that the placement of the home was dictated by these conditions

Attorney Allen argued that the parking court is compatible, in size, location, and overall appearance, with other parking courts in its vicinity. He noted that prior relief was granted for a similar parking court at 63 Hillside Road. He distinguished that a key difference is that the parking court at 63 Hillside Road starts immediately at the entrance of the driveway, and maintains a 0 foot setback. The proposed parking court is shielded by a 3 foot retaining wall, is further shielded by shrubs to screen, and will maintain a 22 foot setback from the front lot line. As a result, Attorney Allen stated, visibility from the street will be virtually impossible. Mr. Allen also noted that the street dead ends directly next to the subject property further mitigating potential visibility to neighbors.

Attorney Allen then reviewed relief under **Section 6.04.5.c.1** of the Zoning By-Law which may be waived by special permit pursuant to **Section 5.43** of the Zoning By-Law. Attorney Allen stated that under this By-Law Section, the Board may waive, by special permit, any dimensional requirement if counterbalancing amenities are provided. He reiterated that the retaining wall, and the shrubbery will offset the reduction in the front yard setback.

Attorney Allen stated that unlike a variance, which has stricter standards, special permits are issued to authorize specific uses such as dimensional relief, after weighing the benefits and detriments of a proposal. See Kiss v. Board of Appeals of Longmeadow, 371 Mass. 147. Attorney Allen maintained that while nonadherence to the provisions of Section 6.04.5.c.1 of the Zoning By-Law might otherwise necessitate a variance, under Section 5.43 of the Zoning By-Law, the Board may waive the requirements by special permit. He stated that relevant case law allows the application of special permit to fine tune dimensional standards. Emond v. Board of Appeals of Uxbridge, 27 Mass.App.Ct. 630. When rendering its decision, , the Board may not refuse special permit for reasons outside of the By-Law. Slater v. Brookline Board of Appeals, 350 Mass. 70. However, the Board may consider projects that were approved or denied within the vicinity of the proposed project. Id.

Attorney Allen then discussed special permit relief under Section 9.05 of the Zoning By-Law arguing: (1) the specific site is an appropriate location in the S-40 District on Hillside Road (33, 63), Warren Street (381), and Heath Hill where a number of properties have parking courts extending into the front yard setback; (2) there will be no adverse effect on the neighborhood due to the extensive screening; (3) there will be no nuisance or serious hazard to vehicles or pedestrians where the Petitioner has created a safer experience for vehicles exiting the subject property and pedestrians traversing on foot; (4) adequate and appropriate facilities have been provided in compliance with The Town of Brookline's storm water management requirements; (5) development will not have any effect on the supply on housing available for low and moderate income people.

Finally, Mr. Allen stated that this proposal does not derogate from the intent or purpose of the Zoning By-Law. He stated that different areas of Brookline maintain particular characteristics for parking options. Whereas some areas in Brookline cannot accommodate parking courts, the

homes along Hillside Road and the surrounding area do allow for the installation of parking courts which facilitates maneuverability and safety.

Chairman Geller questioned when the plan for the parking court was first considered. The Petitioner stated that the parking court was not contemplated when the home was built in 2011. He stated that at time, the house was situated in a manner sufficient to provide space for the pre-existing galleys. He subsequently discovered that the property was dysfunctional due to the incompatibility of the driveway with delivery trucks and other large vehicles. The Petitioner reviewed a number of plans to construct a more accommodating entryway with minimal impact on the neighborhood. He stated that he chose a parking court because it was the most practicable when considering the effect on the neighborhood.

Chairman Geller inquired about the size of other parking courts in the vicinity and whether zoning relief was granted on neighboring properties, in particular, in the case of 63 Hillside Road. Attorney Allen stated that there is a mix of parking courts including pre-existing nonconforming parking courts and others which have received zoning relief. He confirmed that zoning relief was granted in connection with 63 Hillside Road.

Board Member Chiumenti asked whether the Petitioner has the support of his neighbor at 63 Hillside Road. Attorney Allen confirmed that the neighbor at 63 Hillside is supportive.

Mr. Geller called for public comment in favor of, or in opposition to the Petitioner's proposal. No one spoke in favor or in opposition.

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

Dimensional Requirements	Required	Existing	Proposed	Relief Required
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Front Yard Setback (Parking Area)	30 feet	N/A	22 feet	Special Permit *
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** 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 unanimously denied the Petitioner’s proposal. Board Members felt the entire structure as well as the parking court itself is new construction and therefore the Planning Board encouraged compliance with the dimensional requirements.

Therefore, the Planning Board recommended denial of plans submitted by Bruce Bradford, dated 12/11/2015. If the Board of Appeals finds that the standards for special permit relief are met, the Planning Board recommends the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan including all counterbalancing amenities, and features intended to minimize the visual impact of vehicle headlights on abutting properties, subject to review and approval by the Assistant 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) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Rosa, on behalf of the Building Department, stated that the Building Department has no objection to the relief requested. Front yard parking courts of this style and location, and in some instances, closer to the front lot line exist in the surrounding neighborhood. The 22 foot setback is significant in mitigating any adverse impact on abutting properties. He stated that should the Board find that the requirements for a special permit have been met, the Building Department will work with the Petitioner to ensure compliance.

In deliberation, Mr. Chiumenti asked whether the Planning Board was on notice of the specific drainage issues on the property. Mr. Rosa stated that drainage issues were not discussed at the Planning Board meeting. Mr. Chiumenti stated that he visited the property and the only people

who would be effected are the neighbors at 63 Hillside Road. He stated that when considering the totality of the circumstances, including the look of the neighborhood, he is supportive of the proposal.

Chairman Geller concurred with Mr. Chiumenti's comments but expressed his great concern that a new structure should require zoning relief. He noted however that the neighbors are not in opposition and that the proposal is consistent with the neighborhood. Ms. Schneider also stated support of the proposal. She noted that the home was not functional for the Petitioner subsequent to him moving onto the property. She also indicated that the 22 foot setback still maintains adequate front yard setback and the degree of screening included makes the relief modest.

The Board then determined 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 was 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 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.
- 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 conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, and features intended to minimize the visual impact of vehicle headlights on abutting properties, subject to review and approval by the Assistant 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) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

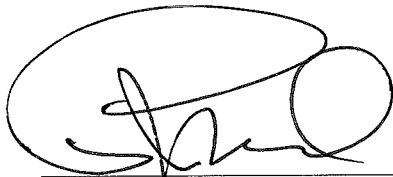
Unanimous Decision of
The Board of Appeals

Filing Date: 5/26/16



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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