



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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TOWN OF BROOKLINE
BOARD OF APPEALS
GEORGE & CLAIRE VASIOS
CASE NO. 2017-0005
195 WINTHROP ROAD

Petitioners, George and Claire Vasios, applied to the Building Commissioner for permission to construct a parking arrangement using a common driveway. 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 June 1, 2017 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 May 18, 2017 & May 25, 2017 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: **195 Winthrop Road** – *Revise parking arrangement using common driveway* in M-1.5 (Apartment House) Residence District, on **June 1, 2017 at 7:15 PM** in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: **George Vasios**) *Precinct 11*.

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 5.91: Usable Open Space**
2. **Section 5.74: Fences and Terraces in the Rear Yard**
3. **Section 6.03.1.a: Location of Off-Street Parking Facilities**
4. **Section 6.04.2.b and c: Design of All Off-Street Parking Facilities**
5. **Section 6.04.4.b: Design of All Off-Street Parking Facilities**
6. **Section 6.04.5.e: Design of All Off-Street Parking Facilities**
7. **Section 6.04.6: Design of All Off-Street Parking Facilities**
8. **Section 6.04.7: Design of All Off-Street Parking Facilities**
9. **Section 6.04.9: Design of All Off-Street Parking Facilities**
10. **Section 6.04.12: Design of All Off-Street Parking Facilities**
11. **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 programs and services of the Town of Brookline are invited to make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at lgellineau@brooklinema.gov

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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 Christopher Hussey and Lark Palermo. Zoning Coordinator and Planner Ashley Clark was also present. The case was presented by the attorney for the Petitioners, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Attorney Allen waived a reading of the public notice. At the request of Mr. Geller, Attorney Jeffrey Allen and Attorney Robert Allen confirmed the agreement of the respective Petitioners for this matter and Case No. 2017-0004 to be heard together.

Attorney Jeffrey Allen stated that the property is located in an M-1.5 Zoning District and the Petitioners seek relief to construct a joint parking arrangement with the owner of 191 Winthrop Road. Attorney Allen continued that the property is located in the middle of the 191-201 Row Houses.

Attorney Robert Allen stated that 195 Winthrop Road is comprised of three condominium units and that the Petitioners are the owners of Unit #1. He stated that there are two existing front yard parking spaces that are deeded to the other two condominium owners at 195 Winthrop Road and indicated that the Petitioners have rented off-street parking spaces since 1990. According to Attorney Allen, the Petitioners submitted a prior appeal to construct designated parking in the front yard which was denied because it necessitated the removal of a street tree. He stated that the Petitioners have exclusive rights to the rear yard of the property, and would like to decrease parking density on Winthrop Road, and allocate parking in the rear yard.

Attorney Allen stated that the direct abutter at 191 Winthrop Road has a rear parking lot and the Petitioners have worked with him to devise an effective parking arrangement that can benefit both buildings with very little to no impact to others. He then stated that there is an existing easement granting the Petitioners access through the rear yard of 191 Winthrop Road.

Attorney Allen continued that the Planning Board reviewed this proposal last year and requested that additional site specific analyses be completed to ensure that the parking arrangement was feasible. He stated that the an analysis of the parking/turning radii for each parking space was completed, materials for the retaining wall were submitted and the Petitioners have met with all relevant Town Hall departments to ensure compliance. Attorney Allen stated that a fence is proposed to create a barrier at the rear.

Jeffrey Allen, Lawson & Weitzen, LLP, 88 Black Falcon Avenue, Suite 345, Boston, MA

02210 appeared on behalf of the abutter, Alex Politman, 191 Winthrop Road, Brookline, MA. He stated that the instant proposal is a result of the joint efforts of the Petitioners and his client. Attorney Jeffrey Allen argued that the arrangement is one that works for this dense neighborhood because it concentrates parking at the rear of the property rather than on the street. He stated that his client worked with the Town to remove three street parking spaces in the front yard, and in lieu of the three spaces, proposes to install "Space #6" adjacent to the building at 195 Winthrop Road as depicted in the parking plan prepared by RAV & Associates, dated 3/2/2017. He stated that the three street parking spaces in the front yard and the related curb cut will be removed and replaced with landscaping.

Attorney Jeffrey Allen stated that Space #6 may straddle the property line at 195 Winthrop Road in consideration for the easement that 191 Winthrop Road has granted to 195 Winthrop Road. He continued that because Space #6 is proposed to be located adjacent to the building, his client proposes to install bollards to act as a barrier between Space #6 and the existing deck at 195 Winthrop Road.

Attorney Robert Allen then reviewed the requested relief. Attorney Allen stated that the requested relief could be granted by special permit under **Section 6.04.12** of the Zoning By-Law, as the Board of Appeals may waive dimensional requirements for new parking facilities to serve existing buildings. Discussing the requested relief under **Section 5.74** of the Zoning By-Law, he stated that the requested relief may be granted by special permit if the Board finds that the proposed height of the fence will mitigate noise, prevent other detrimental impacts, or provide greater safety. Mr. Allen argued that the greater fence height is necessary as a safety measure and to prevent noise noting that the property has a significant slope at the rear. Attorney Allen stated

that an existing retaining wall will be deconstructed and the sloped rear yard will be infilled to level the parking area for increased safety and maneuverability.

Attorney Allen then reviewed the requirements for relief under **Section 9.05** of the Zoning By-Law arguing: (1) the site is an appropriate location for the proposed use as a parking area because the parking arrangement will be located entirely in the rear yard of the property and will not be visible from the street and is similar to parking arrangements along Winthrop Road; (2) the proposed use will not adversely affect the neighborhood because it will alleviate parking density on Winthrop Road which is desirable and the proposed fence will reduce noise impact; (3) there will be no nuisance or serious hazard to vehicles or pedestrians since the parking area will be accessed using an easement at the rear and a site analysis was completed to determine the optimal placement of spaces and turning radii required for navigation and maneuverability; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use since the Petitioners have worked with and will continue to work with the Town of Brookline Engineering Department to address storm water management; and (5) the parking arrangement will have no effect on the supply on housing available for low and moderate income people.

Attorney Robert Allen ended by stating that the instant proposal was a collaborative effort between the Town of Brookline and the owners of 191 and 195 Winthrop Road and argued that the requirements for a special permit have been satisfied. Board Member Hussey asked clarifying questions regarding the height of the proposed retaining wall. Attorney Robert Allen stated that there is an existing retaining wall and the height of the proposed lattice fence is 10 feet. Mr. Hussey commented that a solid material fence would be better suited for the intended purpose of blocking noise.

Chairman Geller called for public comment in favor of the proposal. No comments were offered in favor of the proposal.

Chairman Geller called for public comment in opposition to the proposal. No comments were offered in opposition to the proposal.

Chairman Geller then called upon Ms. Ashley Clark, for the Planning Department, to deliver the findings for the Planning Board:

FINDINGS

Section 5.74: Fences and Terraces in the Rear Yard:

Fence	Allowed	Proposed	Finding
Height (feet)	7 feet	10 feet	Special Permit*

** The Board of Appeals may allow a fence over 7 feet above natural grade by special permit if it is warranted to mitigate noise of other detrimental impacts or provide greater safety*

Section 5.91 – Minimum Usable Open Space:

There is no usable open space on the property since the paved parking area covers the entire backyard.

Usable Open Space	Required	Proposed	Finding
Square Feet (% of GFA)	519 sq.ft. 10%	0 sq.ft. 0%	Variance

Section 6.03.1.a: Location of Required Off-Street Parking Facilities

Required off-street parking facilities shall be provided on the same lot or premises with the principal use served.

Section 6.04 – Design of All Off-Street Parking Facilities:

Section 6.04.2.b – Stall Length

The required stall length for standard parking spaces is 18 feet.

Section 6.04.2.c – Aisle Width

The minimum aisle width for 90° angle parking with 8.5’ stalls is 23 feet. A 10 foot wide aisle is proposed.

Section 6.04.4.b – Width of entrance and exit drives

A two-way driveway entrance must be 20 feet wide. The current right-of-way is only 6 feet wide.

Section 6.04.5.e – Common driveway

The Board of Appeals may by special permit authorize the owners of adjoining properties to establish common driveways under common easement. An easement for these two properties has been recorded with the Norfolk County Registry of Deeds.

Section 6.04.6 – Shielding from illumination

Properties other than the use served by the parking lot shall be protected from headlight glare by a four-foot wide strip of plantings or a five foot high wall, barrier or fence.

Section 6.04.7 – 10 foot setback from basement or first floor rooms

No parking stall shall be located within 10 feet of that part of a building having windows of habitable rooms at the basement or first-story level. The parking space labeled #6 on the parking plan abuts the building.

Section 6.04.9 – Drainage, surfacing and maintenance of parking lots

Parking spaces must be marked, surfaces must be graded, paved and drained to the satisfaction of the Building Commissioner

***All of the above sections could be granted by special permit under Section 6.04.12, as the Board of Appeals may waive dimensional requirements for new parking facilities to serve existing buildings.**

Ms. Clark stated that the Planning Board is supportive of the revised joint parking plan for 191 and 195 Winthrop Road but without the parking space adjacent to the building (#6). noting that the Planning Board felt that the proposal will improve the overall neighborhood by removing 3 parking spaces that currently are in the front yard of 191 Winthrop Road, and placing all parking to the rear. She stated that the Planning Board is pleased with the reduction of paved area on both lots and that the Planning Board noted that the Petitioners provided additional materials that the Planning Board Members and the Planning Department requested showing turning radii, grading and screening. She reiterated the Planning Board's strong opposition to parking space #6 adjacent to the building. She also noted that the Planning Board had concerns

about the narrow six foot wide right of way which will limit visibility. Therefore and subject to removal of the parking space (#6) adjacent to the building, the Planning Board recommended approval of the parking plan prepared by RAV & Associates, dated 3/2/2017 to the following conditions:

- 1) Prior to the issuance of a building permit, the applicant shall submit stamped and surveyed parking plan, 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 landscaping plan, including all counterbalancing amenities and features intended to minimize the visual impact of vehicle headlights on abutting properties including all proposed fencing and retaining walls.
- 3) Prior to 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 building elevations and floor plans stamped and signed by a registered architect; and 3) evidence easements and decision have been recorded at the Registry of Deeds.

Ms. Clark then delivered the recommendation of the Building Department stating that the Building Department suggests a condition requiring snow removal. Additionally, the Building Department noted that while the Petitioners were cited for open space, it is not required because there is currently no open space on the property.

During deliberations, Board Members discussed adding a snow removal plan as a condition. Board Hussey reiterated that the proposed fence should be constructed using solid material to abate noise and headlight glare.

Board Members discussed whether the parking space adjacent to the building (#6) would present safety concerns and whether it should be allowed. In response, Jeffrey Allen commented that the entire parking plan may not be viable without all of the requested parking spaces, including the one adjacent to the building. The Board Members all stated that should it be

permitted, Space #6 should be restricted as a compact space, and that relief should be conditioned on the removal of the three front spaces and curb cut at 191 Winthrop Road and replacement with landscaping.

The Board deliberated on the merits of the relief as requested for the plan dated March 2, 2017 and showing ten parking spaces located to the rear of 191 Winthrop Road and 195 Winthrop Road, including one parking space (identified as #6) located adjacent to the rear of the building at 191 Winthrop Road. The Board then determined, by unanimous vote that subject to the conditions provided below the requirements for special permit relief from **Sections 5.74, 5.91, 6.03.1.a, 6.04.2.b, 6.04.4.b, 6.04.5.e, 6.04.6, 6.04.7, and 6.04.9**, pursuant to Section **6.04.12** of the Zoning By-Law and **Section 9.05** of the Zoning By-Law have been satisfied. 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.

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 stamped and surveyed parking plan consistent with the plan submitted to the Board dated 3/2/2017, 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 snow removal plan, subject to the review and approval of the Building Commissioner.
- 3) Prior to the issuance of a building permit, the applicant shall submit a final site and landscaping plan evidencing removal of the parking spaces and curb cut in the front yard and replacement with landscaping, as well as all other amenities and features intended to minimize noise and the visual impact of vehicle headlights on abutting properties including installation of solid fencing and retaining walls consistent in size, material and appearance with that installed at 191 Winthrop Road, all subject to the review and approval of the Assistant Director of Regulatory Planning.
- 4) The parking space adjacent to the building at 191 Winthrop Road shall be restricted for use for compact vehicles only.
- 5) Prior to 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 building elevations and floor plans stamped and signed by a registered architect; and 3) evidence that the easements and decision have been recorded at the Registry of Deeds.

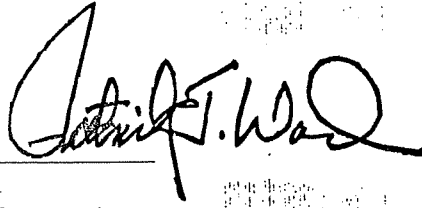
Unanimous Decision of
The Board of Appeals

Filing Date: 8/11/17



Jesse Geller, Chairman

A True Copy
ATTEST:

A handwritten signature in black ink, appearing to read "Patrick J. Ward". The signature is written in a cursive style with a large initial "P".

Patrick J. Ward
Clerk, Board of Appeals