

Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark G. Zuroff
Christopher Hussey

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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0046
63 SUMMIT AVENUE

Petitioner, Joshua Blouwolff (with Rebecca Blouwolff), owners applied to the Building Department for a building permit to legalize and improve an existing outdoor off-street parking space, which is 11.8' from the front lot line, at 63 Summit Avenue. The application was denied and an appeal was taken to this Board. This memo is in support of the Appeal of the Blouwolffs from a denial letter and an application for a Special Permit to legalize an outdoor off-street parking space.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed September 20, 2018 at 7:00 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for appeal. Notice of the hearing was mailed to the Petitioner, to their attorney 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 September 6, 2018 and September 13, 2018 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:

63 SUMMIT AVENUE, #1, BROOKLINE, MA 02446 — Proposed front yard parking space alongside of building in a(n) S-7 Single-Family on 9/20/2018 at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Joshua Blouwolf) *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 6.04.5.C.1 – Design of all off-street parking facilities
2. 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 Town programs and services may make their needs known to Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 7302328; TDD (617)-730-2327; or email at rsneirson@brooklinema.gov.

*Jesse Geller, Chair
Christopher Hussey
Mark Zuroff*

At the time and place specified in the notice, this Board held a public hearing.

Present at the hearing was Chairman Mark G. Zuroff, and Board Members Latk Palermo and Stephen Chiumenti. The case was presented by Attorney Scott C. Gladstone, 822 Boylston St., Suite 300, Chestnut Hill, Massachusetts 02467. Chairman Mark G. Zuroff called the hearing to order at 7:00 p.m.

Attorney Gladstone waived the reading of public notice and explained the background of the case as follows: 63 Summit Avenue is a two-unit condominium building. Petitioners purchased and moved into Unit #1 in April, 2013. The owners of Unit #2 purchased

their unit in May 2015. The current conditions feature a gravel area that is approximately 25.8' long and at least 11' wide at its narrowest point and a 4' wide pedestrian walkway leading to the rear of the property. This area is "common space" but designated in the condominium documents as being for the exclusive use of Unit #1 (Petitioner's unit). There is no curb cut, but the gravel parking area has been used for parking cars since at least 2002 and Petitioners have been using this area for parking since they moved into their unit. Pursuant to a complaint from Unit #2, an inspector with the Brookline Building Department issued a Notice of Violation alleging that Petitioner's car was parked within the front yard set-back. The Notice required Petitioners to either block vehicular access to the space or apply to the Zoning Board of Appeals for relief. This appeal followed.

Attorney Gladstone explained the proposal as follows: Petitioners are preparing to begin the Town's process of requesting a curb cut. The proposed plan of Dennis B. O'Brien dated 6/18/2018 ("Plan") retains a row of trees and other landscaping to the right of the parking area. The Plan proposes to add a curb along the entire length of the parking area to separate it from a proposed 2' wide landscaped area. The proposed landscaped area is adjacent to an existing 4' wide pedestrian walkway leading to the rear yard of the property. Both the proposed landscape strip and curb will provide a physical barrier between the proposed parking area and the pedestrian walkway, thus improving the safety over current conditions wherein there is no separation between the parking area and the walkway. The proposed curb will also cut across the width of the proposed parking area to physically separate the gravel parking area from the landscaped rear yard. There is currently no physical barrier between the parking area and the landscaped rear yard. In consultation with the owners of Unit #2, Petitioners are proposing to install both a 4' high by 8' wide fence and bushes in order to create a separation between the

parking area and the rear yard, thus improving safety in that area as well. Petitioners have not yet decided if they will be maintaining the gravel, but for now will retain the permeable gravel surface.

Attorney Gladstone then explained the relief that was needed and available as follows:

This is a two-unit building at the edge of the S-7 district (immediately adjacent to the T-5 district running along Mason Terrace), which requires a 30-foot front yard setback (a single family would only require a 20' front yard setback). The proposed setback is 11.8'. Relief is available under both Zoning By-law sections 6.04.12 and 5.43.

Section 5.43 permits the Board of Appeals to issue a special permit allowing less than the required yard or setback requirements of the zoning by-law as long as the plan provides for or preserves "a condition or facility not otherwise required that will counterbalance such a reduction." The Plan proposes to preserve a grove of trees and other landscaping to the right of the parking area as well as adding a new landscape strip to the left of the parking area and a separation landscape area between the parking space and the rear yard.

Section 6.04.12 permits the Board of Appeals to issue a special permit to allow, "in lieu of the dimensional requirements of [section 6.04.5], where new parking facilities are being installed to serve existing structures and land uses, the substitution of other dimensional requirements" as long as "such substitution is necessary to permit the installation of some or all of the off-street parking spaces that would be required for a similar new building, and provided the provisions of paragraph 6 of this section are met." Petitioners' unit requires at least two parking spaces. There is currently a single garage parking space (legally) for Unit #1. The Plan describes the only other possible space for the second parking space required for Unit #1. With respect to the satisfaction of paragraph 6 of Section 6.04, which requires the use of one of a

number of strategies to block headlight glare from reaching abutting properties (if even applicable when there are fewer than 7 vehicles), Petitioners state that current conditions already satisfy this requirement as a consequence of existing trees and a solid wooden fence (at least 5' tall) running along the rear property line.

Attorney Gladstone went on to explain that the proposal satisfies all of the Special Permit standards under Section 9.05 as follows:

- a. The site is an appropriate location for such a use, structure, or condition: There is already an open gravel area, which Petitioners have been using for parking since April 2013 and has historically been used for parking since at least 2002. The added curbing and landscaping will result in better separation between vehicular and pedestrian movement. A curb cut with a width adequate to safely enter and exit the proposed parking space is being requested from the Town.
- b. For the reason set forth above, the proposed use will not adversely affect the neighborhood. Also, the owners of Unit #2 currently park vehicles on the other side of the building in the front yard setback as do many other homes on the street.
- c. For the reasons set forth above, there will be no nuisance or serious hazard to vehicles or pedestrians.
- d. For the reasons set forth above, adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low- and moderate-income people as there is no change being made to the structure.

Zoning Board of Appeals Chairman Zuroff invited the Board members to ask questions.

Board member Lark Palermo asked if the petitioner had the right under the condominium documents to use the area for parking. Attorney Gladstone explained that the area was included in the portion of the condominium plan designating the space as exclusive use common space assigned to the petitioner's unit #1. Chairman Mark Zuroff asked if the condominium documents needed to be amended and if the other unit owners needed to approve the plans. Attorney Gladstone explained that because of the exclusive use area already being assigned to the petitioner and because of the long historic use of the space for parking, that the condominium documents did not have to be amended; but, that since it is a change in the appearance of the outside of the property that Unit #2's reasonable approval was necessary, which is why the petitioner has been working with (and will continue to work with) the owners of Unit #2 with respect to design and choice of materials. Member Stephen Chiumenti asked about the zoning by-law provisions concerning the blocking of headlights. Attorney Gladstone responded that such requirements do not apply to parking lots of 6 or fewer vehicles, but that the proposal still would satisfy the standard for larger lots because of the proposed fence and landscaping, which will block any light pollution, as well as the other existing conditions of trees and a fence in excess of 5' separating the petitioner's property from the abutters.

Zoning Board of Appeals Chairman Zuroff asked if there was anyone present who wished to speak in favor of the application. No one spoke in favor of the application. Zoning Board of Appeals Chairman Zuroff asked if there was anyone present who wished to speak in opposition to this application. Jennifer Marlowe, one of the owners of Unit #2, said that she and her husband approved of the plan with the exception that they are requesting that the petitioner reduce the 15-foot curb cut to 12 feet, but that petitioner had not yet responded to that request.

Zoning Board of Appeals Chairman Zuroff called upon Karen Martin, Planner for the Town of Brookline, to deliver the findings of the Planning Board. Ms. Martin responded that Although staff typically does not support parking within the front yard setback, this proposal involves the legalization of an existing parking area that has been in use for 5 years. The location of the parking is not in front of the house but rather to the side and is behind the front façade of the house. There is no interference with pedestrians or traffic flow. The applicants are proposing landscaping, a curb cut and improvements that will overall enhance the appearance of this portion of the front yard and the streetscape. The Planning Board urged the parties to agree on a revised plan, which pushes the parking space 2 feet into the common area rear yard so as to bring the parking space behind the main portion of the building and not just behind the porches and garage that are forward of the rest of the building facing the street.

Therefore, the Planning Board recommends approval of the parking plan prepared by Dennis O'Brien, dated 9/12/2018 subject to the following conditions:

- 1) Prior to the issuance of a building permit, the applicant shall submit stamped and surveyed parking plan including existing and proposed conditions subject to the review and approval of the Assistant Director of Regulatory Planning and having been agreed upon by the owners of Unit #2.
- 2) Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan subject to the review and approval of the Assistant Director of Regulatory Planning.
- 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 parking plan, stamped and signed by a registered engineer or land surveyor; and 2) evidence the decision have been recorded at the Registry of Deeds.

Attorney Gladstone expressed the petitioner's intention to work with the owners of Unit #2, but asked that the approval of the owners of Unit #2, which must be reasonably given, not be made a condition of the special permit. Attorney Gladstone also explained that petitioner asked the owners of Unit #2, through counsel, if they would agree to extend the parking area into the

common rear yard but the Unit #2 owners, understandably, did not wish to give up common rear yard space.

The Chairman then called upon acting Deputy Building Commissioner, Michael Yanovitch, to deliver the comments of the Building Department. Mr. Yanovitch reported that many houses on this street park their cars in violation of the front yard setbacks, but that enforcement is driven only by complaints and he appreciates the fact that the petitioner has come forward to legalize the space. Mr. Yanovitch reported that, according to the Town imaging technology, records show that there has been a parking space use in existence on this spot since at least as far as 2002 and that if this were a structure, and not just a use, that it would be permitted as of right since the statutes of limitations set forth in Chapter 40A would have expired. Mr. Yanovitch noted that for parking areas of 6 vehicles or fewer, there is no regulation concerning the width of the curb cut or for the width of the parking area and that he would leave the curb cut up to Peter Ditto at DPW to determine what dimensions will be required for safety. Mr. Yanovitch also stated that the proposal does not trigger the land disturbance by-law but that he would refer that issue to Peter Ditto at DPW as well. Finally, Mr. Yanovitch stated that the Building Department is supportive of the proposal and would work with the Petitioner to ensure compliance with all requirements.

In deliberations, Chairman Zuroff commented that the proposal will make the current situation safer. Board Member Stephen Chiumenti observed that several neighbors on the same street also park in violation of zoning and that the proposal is clearly an improvement. Board Member Lark Palermo commented that the proposed improvements will make the site safer and more visually pleasing.

The Board of Appeals then determined by unanimous vote that the requirements for a Special Permits for Sections 5.43, 6.04.5.C.1, 6.04.12 have been met. The Board made the following specific findings pursuant to said Section 9.05:

- a. The specific site in 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 of Appeals voted unanimously to grant the requested relief for the plans of Dennis B. O'Brien Land Surveying dated September 12, 2018 subject to the following conditions:

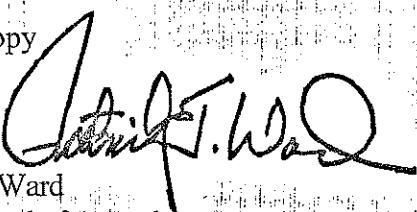
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Unanimous Decision of
The Board of Appeals

Filing Date: 10/19/18

A True Copy

ATTEST


Patrick J. Ward
Clerk, Board of Appeals


Mark G. Zureff, Chairman