



BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Johanna Schneider

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2019-0066
39 SHEAFE STREET, BROOKLINE, MA

Petitioner, Holly Sheafe LLC, applied to the Building Commissioner for permission to expand the existing parking area. 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 certified by the Board of Assessors of the Town of Brookline and fixed December 12, 2019 at 7:00 PM., in the Select Board's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioners, to Robert L. Allen, Jr., 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 November 28, 2019 and December 5, 2019 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 on **12/12/2019** at **7:00PM** in the **6th Floor Select Board's Hearing Room, Town Hall, 333 Washington Street, Brookline**, on the following:

39 SHEAFE STREET, BROOKLINE, MA 02467. Petitioner - Robert L. Allen, Jr. Expand existing parking area. M-1.0 APARTMENT HOUSE Zone. Precinct 15.

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

- §5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**
- §6.04.5.A DESIGN OF ALL OFF-STREET PARKING FACILITIES**
- §6.04.5.B – DESIGN OF ALL OFF-STREET PARKING FACILITIES**
- §8.02 - ALTERATION OR EXTENSION**

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 in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer.

If you have any questions regarding the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

*Jesse Geller, Chair
Mark Zuroff
Johanna Schneider*

Publish: 11/28/2019 & 12/05/2019

At the time and place specified in the notice, this Board held a public hearing. Due to Town Meeting, the hearing was continued to January 16, 2020 at 7:00 p.m. in the Select Board's Hearing Room. Present at the hearing were Chairman Jesse Geller and Board Members Mark Zuroff and Johanna Schneider. Also present at the hearing were Senior Planner, Maria Morelli and Deputy Building Commissioner, Joseph Braga.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445.

Chairman Geller called the hearing to order at 7:00 p.m. Attorney Allen waived the reading of the public notice.

Attorney Allen then described the proposal stating that the Petitioner proposes to widen the existing driveway and allow four (4) cars to be parked without spilling over on to the lawn. The Petitioner needs relief from **Section 6.04.5** for the driveway setback in the front yard, under **5.43** and pursuant to **Section 9.05**. Attorney Allen noted that all the relief is available by special permit. Mr. Allen stated that although 5.43 cannot be used to reduce the front yard setback to less than 15' in an M-District, this is a pre-existing non-conformity, as the existing parking setback on the Holly side, where the relief is needed is 5' at the closest point and the proposed is 2' at the closest point. He noted that the applicant is more than willing to provide counterbalancing amenities, and in fact has changed the proposed trees to a privet evergreen hedge 3'-5' high, planted 3' on center, at the request of the Planning Board.

Attorney Allen described the standards under **Section 9.05** of the Zoning By-Law stating: the location is appropriate for the proposed widening of the driveway, which is a pre-existing non-conforming condition on the lot with two fronts; the use will not adversely affect the neighborhood because the use of the home will not change and the widened parking area will create a better parking experience for occupants in the building and a cleaner streetscape for pedestrians.; there will be no nuisance or serious hazard to vehicles or pedestrians, as widening the driveway will create a better pedestrian experience and the curb cut will not be widened; adequate and appropriate facilities will be provided for the proper operation of a two-family dwelling with four parking space; and there will be no effect on the supply on housing available for low and moderate income people.

Chairman Geller then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal.

Chairman Geller then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Chairman Geller then called upon Maria Morelli, Senior Planner, to deliver the findings of the Planning Board. Ms. Morelli noted the following:

ZONING

Findings

	Required	Existing	Proposed	Finding
Parking Setbacks:				
Sheafe (front)	10'	16'	16'	Special Permit
Holly (front)	10'	5'	2'	

** Under Section 5.43, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.*

1 M.G.L. c.40A, §6 finding (aka Deadrick) – Because the structure is nonconforming, any alteration or substantial reconstruction that increases the nonconforming nature of the property can only be approved provided that the Zoning Board of Appeals make a finding that the altered structure is not substantially more detrimental to the neighborhood than the existing structure.

2 Section 8.02: Alteration or Extension – A Special Permit is required to alter and/or extend this non-conforming structure.

3 Section 5.43: Exceptions to Yard and Setback Regulations – The Zoning Board of Appeals may waive any setback requirement in the Bylaw if appropriate counterbalancing amenities are provided. This project needs relief from **§6.04.5.A** which requires that parking stalls have a minimum setback of 5’ from all street lot lines and from **§6.04.5.B** which requires that all portions of parking areas in M Districts be setback a minimum of 10’ from all street lot lines.

PLANNING BOARD RECOMMENDATION

The Planning Board is supportive of this proposal. The Board briefly discussed screening options, and suggested that screening should be composed of shrubs (lilac, privet hedge) roughly 3 to 5 feet high.

The Planning Board recommends approval of the site plan by J.K. Holmgren Engineering, dated October 24, 2019, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director of Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscaping plan indicating all counterbalancing amenities to the Assistant Director of Regulatory Planning for review and approval.
3. Prior to the issuance of a building permit, the applicant shall 1) electronically submit the site plan and landscaping plan displaying the approval stamp of the Assistant Director of Regulatory Planning; and 2) evidence that the Board of Appeals decision has been obtained from the Town Clerk’s office by the applicant or their representative and recorded at the Registry of Deeds.

Ms. Morelli indicated that the revised site plan as presented was dated January 15, 2020.

Chairman Geller then called upon Joseph Braga, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Braga stated that the Building Department had no objections to the relief requested.

During deliberation, Chairman Geller noted that a finding could also be made under the Deadrick line of cases and M.G.L. ch. 40A, s. 6.

In reliance on the above referenced revised plans, the Board then determined, by unanimous vote that the requirements for relief from Section 6.04.5 under Section 5.43 and pursuant to Section 9.05 for the driveway setback in the side yard, finding specifically under said Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition because the proposed driveway is pre-existing non-conforming and will remain in the same location.
- b. The use as developed will not adversely affect the neighborhood because the use of the home will not change and the widened parking area will create more functional parking for occupants in the building and a better streetscape for pedestrians.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians as widening the driveway will create an improved pedestrian experience and the curb cut will not be widened.
- d. Adequate and appropriate facilities will be provided for the proper operation of a two-family dwelling with four parking spaces.
- e. Development will have no 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:

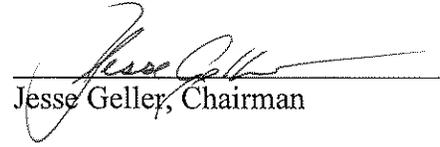
1. Prior to the issuance of a building permit, the applicant shall submit a revised site plan showing the maintained landscape buffer up to the garage subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities being provided under Section 5.43 of the Zoning By-Law, subject to the review and approval of the Assistant Director of Regulatory Planning and

which counterbalancing amenities shall be installed upon issuance of said building permit.

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: a) a final site plan, stamped and signed by a registered engineer or land surveyor; and b) evidence the decision has been recorded at the Registry of Deeds.

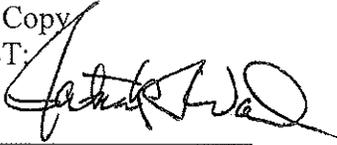
Unanimous Decision of
The Board of Appeals

Filing Date: 2.18.2020



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals