



# Town of Brookline Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark Zuroff  
Johanna Schneider

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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2020-0063  
5 MASON TERRACE  
BROOKLINE, MA

Petitioners, Chuck and Sue Ross, applied to the Building Commissioner for permission to legalize an existing parking space at 5 Mason Terrace in a SC-7 Single-Family & Converted for Two-Family District. 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals, and fixed February 11, 2021 at 7:00 p.m. virtually as the time and place of a hearing for the appeal. 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 January 28, 2021 and February 4, 2021 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 **virtual** public hearing on **February 11, 2021 at 7:00PM**

**Register for this hearing:**

<https://bit.ly/3qwM1IU>

*After registering you will receive a confirmation email containing information about joining the hearing.*

**Our Virtual Meeting Guide for Applicants and the Public can be found here:**

<https://bit.ly/30wRoY3>

**5 MASON TERRACE, MA 02446 – LEGALIZE AN EXISTING PARKING SPACE AND INSTALL A 15.5’ CURB CUT. This property is in an SC-7 SINGLE-FAMILY & CONVERTED TWO-FAMILY ZONE. This case is to be heard virtually on 2/11/2021 at 7pm (Petitioner: ROSS, SUSAN M & CHARLES N) 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:

**§6.04.5.A DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**§8.02 - ALTERATION OR EXTENSION**

**Any other relief the Board finds necessary**

***PUBLIC COMMENT FILES, PDFs OR PRESENTATIONS:***

*Advance submissions of files and presentations are strongly encouraged. In an effort to ensure the Board has adequate time to review materials we ask that any additional documents such as written comment letters, photos, files, or presentations be sent before the hearing to Monique Baldwin ([mbaldwin@brooklinema.gov](mailto:mbaldwin@brooklinema.gov)) and Joe Braga ([jbraga@brooklinema.gov](mailto:jbraga@brooklinema.gov)). Public testimony will be taken during the hearing as normal.*

*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 [mbaldwin@brooklinema.gov](mailto:mbaldwin@brooklinema.gov), or by checking the Town meeting calendar at: [www.brooklinema.gov](http://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 this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at [chaynes@brooklinema.gov](mailto:chaynes@brooklinema.gov).*

***Jesse Geller, Chair***

***Mark Zuroff***

***Johanna Schneider***

**Publish: 1/28/2021 & 2/4/2021**

On February 11, 2021 at 7pm the Brookline Zoning Board of Appeals held a public hearing. Present at the hearing were Zoning Board Chair Johanna Schneider and Board Members Kate Poverman and Randolph Meiklejohn.

The Petitioner's attorney, Attorney Jennifer Dopazo Gilbert, Law Office of Robert L. Allen, Jr. P.C., 300 Washington Street, Brookline, MA, waived a reading of the public hearing notice for the record. Also in attendance were the Petitioners, Chuck and Sue Ross.

Attorney Dopazo Gilbert presented the proposal. Relying on an electronic presentation, she stated that the Petitioners seek to create a curb cut to access an existing parking space. She noted that the parking space has existed for over 40 years and it is accessed by driving over the curb. Attorney Dopazo Gilbert stated that the zoning relief was sought pursuant to **Section 5.43** of the zoning by-law, from the provisions of **Section 6.04.5.a** that require the parking space to be set back five feet from the street lot line. Attorney Dopazo Gilbert stated that a three-foot setback is provided in lieu of the required five feet. Attorney Dopazo Gilbert stated that relief could be granted if a counterbalancing amenity is provided and noted that many letters in support of legalizing the parking space were provided to the Board.

Attorney Dopazo Gilbert described the lot as having at least 306 feet of frontage in a peninsula shape. She stated that there are two existing curb cuts: one at the lower garage and one at the top of the lot, opposite to the former. She noted that the proposal does not increase the number of parking spaces, and that the curb cut merely provides safe access to the existing parking space.

Attorney Dopazo Gilbert stated that there are generally three reasons to regulate curb cuts: neighborhood aesthetics, safety and maintaining on-street parking. To the first, Attorney

Dopazo Gilbert stated that 5 Mason Terrace is at a convergence of five zoning districts and therefore there is a lack of cohesion in regards to curb cuts. She also noted that the historic pedestrian path will not be visually impacted by the additional curb cut. To the second, relying on photographs of the property directly across the street of 5 Mason Terrace, Attorney Dopazo Gilbert stated that the addition of this curb will not create a conflict with another curb cut. Further, she noted, the curb cut will be a visual signal to pedestrians that a car may be entering or exiting the parking space.

Attorney Dopazo Gilbert noted that the Planning Board was supportive of a fourth car, but had suggested that the Petitioner widen the existing parking area. Attorney Dopazo Gilbert reviewed sketch site plans and photographs to demonstrate the severe grade change and stated that the solution suggested by the Planning Board were uneconomic, would decrease pervious surface, result in the loss of mature trees and had opposition from abutters.

Attorney Dopazo Gilbert then described the proposed counterbalancing amenities. She stated that the Petitioner proposes to provide additional landscaping, preserve the supply of parking to the neighborhood and increase the safety for pedestrians. Attorney Dopazo Gilbert reiterated that the relief sought is for a three-foot setback, where five feet are required.

Attorney Dopazo Gilbert stated that the proposal will meet all of the requirements for a special permit under **Section 9.05** stating as follows: a. The specific site is an appropriate location for such a use, as the use has existed for more than 40 years and will continue. b. The use as developed will not adversely affect the neighborhood, as the curb cut will increase safety to pedestrians and maintain parking supply for the neighborhood and there will be no impact to any trees. c. There will be no nuisance or serious hazard to vehicles or pedestrians as the curb cut will increase safety for both vehicles and pedestrians d. 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.

Upon inquiry from Chair Schneider, Attorney Dopazo Gilbert confirmed that the Petitioner currently drives over the curb to access the parking space and stated that the next step would be to apply for a permit with the Department of Public Works (DPW).

The Board discussed the proposed driveway width of 15 feet. Attorney Dopazo Gilbert noted that the curb cut could be as narrow as 12 feet wide. The Board expressed general consensus that a narrower driveway was preferable to the proposed 15 feet.

The Board discussed the Planning Board report and the Planning Board's recommendation to widen the existing parking pad. Board Members noted that the lot had a lot of frontage. Reviewing photographs of the existing back yard that depicted the elevation change, Board Members concurred that it would be a substantial area to infill and would be an expensive undertaking. Ms. Baldwin noted that the Planning Board was comfortable with the number of cars and added that the Planning Board was not unanimous in the recommendation to expand the existing parking pad.

Upon the request of Board Member Meiklejohn, Mr. Ross provided a measurement of the existing pavement area. Board Member Meiklejohn was satisfied that the pavement was not wide enough to accommodate a second car or could be easily expanded.

Chair Schneider then called for public comments in favor of the proposal. Abutters Tom and Caroline Barnes spoke in support of the zoning relief and testified that the height elevation change is dramatic. Mr. Barnes noted that expanding the existing parking pad would impinge on

the Rosses' backyard, would require a substantial volume to be filled in. He also noted that by expanding the parking area to the right side, the car would "encounter the house."

Chair Schneider then called for public comments in opposition to the proposal. No comments were submitted and no one spoke in opposition. Chair Schneider noted that the Board was provided with one letter in opposition.

Chair Schneider then called upon Monique Baldwin, Planner and Zoning Coordinator to deliver the reports of the Planning Department and Board:

### **FINDINGS**

**§6.04.5.A – DESIGN OF ALL OFF-STREET PARKING FACILITIES** -- In all districts, parking stalls in parking lots shall be set back from the street lot line, a minimum of five feet and further to whatever extent may be necessary in the specific situation, as determined by the Building Commissioner, to avoid the probability of cars backing or otherwise maneuvering on the sidewalk upon entering or leaving the stalls.\*

\*Under § 5.43, the front yard setback may be waived by special permit if a counterbalancing amenity is provided.

**§8.02 - ALTERATION OR EXTENSION** – A special permit is required for the alteration of a non-conforming structure.

### **PLANNING DEPARTMENT COMMENTS**

Ms. Baldwin stated that the Planning Department does not object to legalizing this parking space which has been in existence for 15 years and would support the installation of a curb cut. She noted that due to the lot having streets surrounding all but one side of the lot, the only way to have parking outside of the front yard setback would be to encroach on the backyard play space. Ms. Baldwin stated that an appropriate counterbalancing amenity to consider would be the installation of an electric hook-up suitable for a future electric car.

### **PLANNING BOARD RECOMMENDATION**

Ms. Baldwin stated that the Planning Board is not opposed to the addition of a parking space to the site but opposes the proposed location directly in front of the existing house's front

entrance. She stated that the Board feels that the property should be limited to two curb cuts (as existing) and that a third curb cut is excessive. Ms. Baldwin added that the Board feels that instead of legalizing the area currently used for parking as a parking space, the parking space along Mason Terrace or the garage along Lancaster Terrace should be expanded.

Ms. Baldwin stated that the Planning Board recommends that the applicant eliminate the packed area in front of the house's front entrance and add an additional parking space to the right of the existing parking space along Mason Terrace.

Ms. Baldwin stated that the Planning Board recommends denial of the site plan by Whitman & Bingham Associates, dated 11/24/2020. However, she noted, if the Zoning Board of Appeals approves of the site plan by Whitman & Bingham Associates, dated 11/24/20, the Planning Department recommends 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 for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan or a plan showing an electric hook-up for an electric car for the legalized space in order to serve as the required counterbalancing amenity subject to approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be implemented in accordance to the approved plan.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan displaying the approval stamp of the Assistant Director for Regulatory Planning; and b) 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.

Chair Schneider then called upon Deputy Building Commissioner, Joe Braga to deliver the opinion of the Building Department. Mr. Braga stated that the Building Department has no objection to the relief requested.

The Board then deliberated on the merit of the application. Chair Schneider stated that the relief sought for the setback was minimal and a curb cut was an appropriate counterbalancing amenity as it created a safer environment for pedestrians. She noted that the curb cut is across from an area that will not see an added curb cut in the future. Chair Schneider opined that the proposed 15-foot wide driveway was excessive, but she would support a twelve-foot-wide driveway. Board Member Meiklejohn was supportive of the relief and noted that there was a lot of support from the abutters and felt the change in grade was substantial. Board Member Poverman concurred and noted that while this would be a third curb cut, it would be located far from the curb cut located down grade and noted the infeasibility of expanding the existing parking pad had been demonstrated. She stated that additional landscaping to block the car from the front of the street would be an appropriate additional counter balancing amenity.

The Board voted unanimously to grant a special permit pursuant to **Section 5.43**, from the provision of **Section 6.04.5.a**.

The Board made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

- 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. The development as proposed will not have a significant adverse effect on the supply of housing available for low- and moderate-income people.

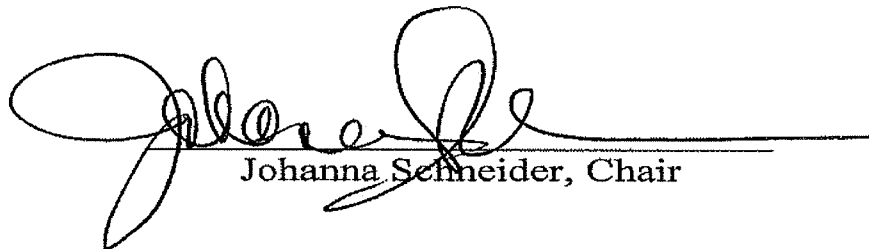


Accordingly, the Board voted unanimously to grant special permit relief, subject to the following revised conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit a final site plan showing a 12-foot-wide curb cut, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan which shall include a landscape screening of the vehicle from the front of the lot, subject to approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be implemented in accordance to the approved plan.
3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan displaying the approval stamp of the Assistant Director for Regulatory Planning; and b) 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.

Unanimous decision of the

Board of Appeals



Johanna Schneider, Chair

Filing Date: 03/01/21

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals