



BOARD OF APPEALS  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Christopher Hussey

RECEIVED  
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*Town of Brookline*  
BUILDING DEPT  
TOWN OF BROOKLINE  
*Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2012-0005

Petitioners, Christian Hansen and Raymond Licia, applied to the Building Commissioner to legalize a parking area in the front yard of their home at 31-33 Winthrop Road. The application was denied and an appeal was taken to this Board.

On January 12, 2012 the Board met and 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 23, 2012 at 7:15 p.m. in the Selectmen's hearing room as the time and place of a hearing on 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 February 2 and 9, 2012 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

**Petitioner: HANSEN, CHRISTIAN E & RAYMOND, LUCIA L**

Owner: **HANSEN, CHRISTIAN E & RAYMOND, LUCIA L**

Location of Premises: **31-33 BEACON STREET**

Date of Hearing: **February 23 , 2012**

Time of Hearing: **7:15 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup> Floor**

A public hearing will be held for a variance and/or special permit to:

1. **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
2. **6.04.5.a Design of All Off-Street Parking Facilities, variance required.**
3. **6.04.5.c.1; Design of All Off-Street Parking Facilities, variance required.**
4. **6.04.12; Design of All Off-Street Parking Facilities, special permit required.**
5. **8.02.2; Alteration or Extension, special permit required of the Zoning By-Law to legalize a two-vehicle parking area recently constructed in the front yard of the property at 31-33 WINTHROP ROAD.**

Said premise located in a **T-6 (two-family and attached single-family)** residential district.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar*

*at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*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 the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr, and Board Members, Mark G. Zuroff and Jonathan Book. The case was presented by the petitioner, Christian Hansen.

Mr. Hansen described his home at 31-33 Winthrop Road as a substantial two-family structure located on a half acre lot on the low-side of the street adjacent to the University Road pedestrian path. He said there was a relatively small two-car garage on the property with two additional parking spaces directly

in front. Mr. Hansen noted that the spaces in front of the garage were located in the front yard of his property but he believed that this was a pre-existing, non-conforming condition. He said that the neighborhood is mostly multifamily residential dwelling units; many of which have front yard parking areas.

Mr. Hansen reported that he recently created an additional parking area to the left of the existing driveway as part of a larger landscaping project. He said he was not aware that parking spaces needed a building permit and apologized for any inconvenience in this regard. Mr. Hansen said that he is proposing to legalize a two-vehicle parking area installed adjacent to the driveway. The new parking area measures approximately 24' x 15' and is paved with paving stones and bounded on three sides by holly bushes. He said that the parking area is set back from the University Road pedestrian path by 1.2' and is supported by a retaining wall.

Mr. Hansen reported that considerable funds have been expended in refurbishing the property which consists of two condominium units. He also stated that landscaping efforts have cleaned-up what was overgrown trees and brush, and the expanded parking area was part of this effort.

Mr. Hansen said that his family has three vehicles. He and his wife each have one and his daughter has a smaller vehicle that is often kept in the garage. He reported that the other condominium owner, a doctor, has only one vehicle and it is most often parked in front of the garage in one of the two pre-existing spaces. He said that he looked at parking in the rear yard but the steep slope and proximity of the garage to the lot line and his residence prevented that approach. He said that he also looked at expanding the garage but he thought that he would have to reappear before the Board of Appeals as that would, in his opinion, also require additional zoning relief. Mr. Hansen said that if his home were constructed today, he would be required to provide 4.6 parking spaces under current zoning.

Board Member, Zuroff asked about the possibilities relative to the use of the area behind the garage for parking and Mr. Hansen reiterated the fact that the steep downward slope and location of the current garage prevented this approach.

Mr. Hansen submitted photographs of his property as well as similar parking arrangements in the neighborhood. The Chairman accepted these as exhibit #1.

Board Member Book inquired as to whether the garage could be expanded and Mr. Hansen replied that he has been advised that it would entail considerable expense and additional zoning relief as well.

The Chairman asked whether anyone in attendance wished to speak in favor or against the proposal.

Mr. Kirk James of 35 Winthrop Road, an abutter on the other side of the path, reported that while walking in the neighborhood he has observed many residents parking in the front yard. He said the parking situation at 31-33 Winthrop Road is very safe from a pedestrian perspective. He said that he is very supportive of the additional parking area and reported that the landscaping overall, has improved significantly since the new owners had acquired the property.

Courtney Synowiec, Planner, delivered the findings of the Planning Board.

**Section 6.04.5.a & c.1 – Design of All Off-Street Parking Facilities**

Parking facilities shall be setback 15’ from the front lot line and 5’ from the side lot line.

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Front Yard Setback</b>	15’	Est. 5’	1.8’	Special Permit*
<b>Side Yard Setback</b>	5’	Est. 15’	1.2’	Special Permit*

\* Under Section 5.43, the Board of Appeals may waive dimensional requirements if a counterbalancing amenity is provided. The applicant is proposing to provide additional landscaping around the parking area to provide additional screening.

\*\* Under Section 6.04.12, the Board of Appeals may waive dimensional requirements for parking areas to serve existing facilities if such a substitution is necessary to provide parking that would be required if the building were built today. If built today, the building would require 4.6 parking spaces. The applicant is seeking relief for 6 spaces.

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter a pre-existing non-conforming structure or use.

Ms. Synowiec reported that the Planning Board opposed this application as they would not have supported the installation of this parking area if relief had been sought prior to its installation. The Planning Board felt that four parking spaces are adequate to serve a two-family structure and the additional parking spaces create a detriment to the appearance of the streetscape. She said that the Planning Board felt that alternatives could have been sought, such as rebuilding the garage to support more parking, and approving legalization of this parking area would set a bad precedent for other front yard parking areas located on relatively flat lots in this neighborhood. Therefore, the Planning Board recommended denial of the legalization of the parking area and the plans by Boston Survey, Inc., dated 12/21/11.

The Chairman then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard noted that the new parking area was discovered by one of the Local Building Inspectors while working in the neighborhood. He said that Mr. Hansen immediately visited the Building Department office when advised that he needed a building permit for this type work. Mr. Shepard reported that Mr. Hansen was not aware of the permit requirement for parking/driveways. He said that this was somewhat understandable since the Building Code is silent on permitting for this type of work. Mr. Shepard reported that the permit requirement in Brookline is primarily in place to assure conformance to zoning requirements. Mr. Shepard said that his department supported this request for relief albeit in a reduced form. He said that the parking area should be pulled-back from the side lot line to the minimum 5 feet required by the Zoning By-Law. This, he said would provide room for more plantings and space for a safety railing to prevent vehicles from possible encroachment on the walkway. Mr. Shepard also reported that he would like to see the parking be limited to one vehicle, not two as requested.

During deliberations, Board Member Zuroff noted that it is not the policy of the Board of Appeals to reward those that do work without the appropriate permits. He said that in his opinion there was adequate parking on the site without this additional area. He said that he did not feel that the petitioner had exhausted all the potential solutions before embarking on this approach. Mr. Zuroff also said however, that given the situation, he would be supportive if the additional parking were reduced to one space. Mr. Book reported that additional plantings and the addition of a safety railing would be appropriate amenities for the relief requested. Chairman Starr reported that she could see how an average citizen could be confused about the requirement for a building permit since the work involved a driveway/parking and not a structure. She reported that with adequate counterbalancing amenities that she would be supportive of the requested relief.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that all the requested relief could be granted by special permit. The Board found that the petitioner has satisfied the requirements necessary for relief under **Section 5.43**, to waive the dimensional requirements of the Zoning By-Law relative to parking in the front yard. Also the requirements of **Section 8.02.2**, and **9.05** of the Zoning By-Law were satisfied, and 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.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

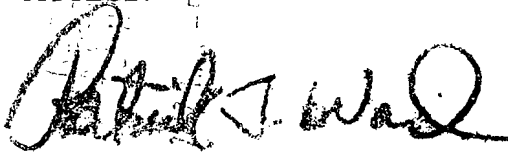
1. Prior to the issuance of a building permit, the petitioner shall submit a final landscape plan indicating the parking area pulled-back to the required 5 foot setback, additional plantings on all sides of the parking area and the location of a substantial safety railing, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. No more than five vehicles (two in the garage, three in the driveway) shall be parked on the property at any time. No vehicles shall encroach upon the sidewalk at any time.
3. Prior to the issuance of a building permit, the petitioner 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 and, 2) evidence that the decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

  
Enid Starr, Chairman

Filing Date: March 5, 2012

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals