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BUILDING DEPT.  
TOWN OF BROOKLINE

# Town of Brookline Massachusetts

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

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2012-0021

Petitioner, James P. Lockwood, applied to the Building Commissioner for permission to convert the entire premises into a single family residence on a single story with accessory parking for two cars per plans at 37 Franklin Street. The application was denied and an appeal was taken to this Board.

On 15, March 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 19, April 2012, at 7:15 p.m. in the Selectmen's Hearing Room, sixth floor, Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to his 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 29, March and 05, April 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: **LOCKWOOD JAMES P**  
Location of Premises: **37 FRANKLIN ST BRKL**  
Date of Hearing: **04/19/12**  
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 from:

- 1) **5.10; Minimum Lot Size; Variance Required.**
- 2) **5.15.2; Exception to Minimum Lot Size and Lot Width Requirements, Special Permit Required.**
- 3) **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
- 4) **5.60; Side Yard Requirements, variance required.**
- 5) **5.70; Rear Yard Requirements, variance required.**
- 7) **6.04.5.b; Design of All Off-Street Parking Facilities, variance required.**  
**6.04.5.c.2; Design of All Off Street Parking Facilities, variance required.**  
**6.04.12; Design of All Off-Street Parking Facilities, special Permit Required.**
- 7) **8.02.2; Alteration or Extension; Special Permit Required**

Of the Zoning By-Law to Convert the existing structure at 37 Franklin St. into a conforming residential use with related alterations.

**At 37 FRANKLIN ST**

Said Premise located in a **M-1.0** (Apartment House) 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.***

**Enid Starr  
Jesse Geller  
Christopher Hussey**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members, Christopher Hussey and Mark Zuroff.

Attorney Michael W. Merrill, 100 State Street, Suite 200, Boston, MA 02109 presented the case before the Board.

Attorney Merrill said that in 1978 the Board of Appeals granted approval to subdivide 37 and 41 Franklin Street into two separate lots, one with a three-family residential dwelling and the other, #37, with a commercial garage building. Attorney Merrill said that 37 Franklin Street is located between Rice and Roberts Streets, with a single-story garage building on a lot that is nearly entirely paved. The garage is currently used for the storage of construction equipment and materials, which is a legally non-conforming use. The rest of the lot is used for parking. The surrounding lots are all residential, ranging from single to multi-family dwellings. A large apartment building exists to the rear of the garage.

In 2009 the Board of Appeals granted approval to convert the existing garage into a single-family home and construct a second story. The proposal was never built and the associated relief expired in March, 2010.

Attorney Merrill said that the petitioner, James Lockwood at this time proposes to convert the entire building into a single-family dwelling. There will be no second story addition, but a second egress will be added toward the parking area to provide for a second egress. The garage's current vehicle bays would be removed and replaced with a center entrance bookended by symmetrical windows. A window would be added to the south side elevation, three windows to the west elevation and three windows to the north elevation. Two parking spaces would be located directly to the left of the front of the building in the side yard and Mr. Lockwood intends to remove the paving in front of the building that is currently used for parking and install landscaping.

Attorney Merrill said that the project would convert a pre-existing non-conforming use to one that is conforming. He said that his client seeks relief from minimum lot size, side and rear set back requirements, parking relief and a special permit for a pre-existing, nonconforming structure. Attorney Merrill said that this conversion is appropriate to and would not adversely affect the neighborhood. He described Mr. Lockwood as an accomplished contractor/designer with a sterling reputation in the community.

The Chairman asked whether anyone wished to speak in favor of or against the application. There were no members of the public present to speak either in favor of or against the application.

Lara Curtis Hayes delivered the findings of the planning department staff.

**Section 5.10 – Minimum Lot Size:** The minimum lot size requirement for a single-family home in an M-1.0 zoning district is 4,000 s.f. The subject property's lot size is 3,110 s.f.

**Section 5.15.2 – Exception to Minimum Lot Size and Lot Width Requirements:** The Board of Appeals by special permit may allow a single-family home to be constructed on a lot that does not meet minimum lot size requirements if the dwelling is on a lot that was contiguous to another lot in the same ownership on or after July 27, 1962; the yard requirements are observed; and the lot width is not less than three-fourths than required. This property was subdivided after 1962 and exceeds the lot width requirement of 40 feet. *Special permit required.*

**Section 5.43 – Exceptions to Yard and Setback Regulations**

**Section 5.60 – Side Yard Requirements**

**Section 5.70 – Rear Yard Requirements**

**Section 6.04.5.b – Design of All Off-Street Parking Facilities:** The surfaced area of parking lots and all entrance and exit drives shall be set back a minimum of 10 feet from the street lot line and five feet from all other lot lines.

**Section 6.04.12 – Design of All Off-Street Parking Facilities**

**Section 8.02.2 – Alteration or Extension:** A special permit is required to alter and extend this nonconforming structure.

	Required	Existing	Proposed	Finding
<b>Side Yard Setback</b>	7.5 feet	5.9 feet	5.9 feet	Special Permit*
<b>Rear Yard Setback</b>	30 feet	3.2 feet	3.2 feet	Special Permit*
<b>Parking: Front Yard Setback</b>	10 feet	0 feet	15.9 feet	Complies
<b>Parking: Side Yard Setback</b>	5 feet	0 feet	0 feet	Special Permit** (previously existing nonconformity)

\*Under Section 5.43, the Board of Appeals may allow by special permit alternate dimensions for setback and yard requirements if counterbalancing amenities are provided.

\*\*Under Section 6.04.12, the Board of Appeals may allow by special permit the substitution of other dimensional requirements for parking facilities when new parking facilities are being installed to serve existing structures, provided the substitution is necessary for the installation of the off-street parking spaces that would be required for a similar new building.

Ms. Curtis reported the Planning Board is supportive of the proposal to convert the structure into a single-family dwelling. The building is surrounded by parking areas on neighboring lots, which provide a small buffer between the subject building and neighboring dwellings. Additionally, the conversion will bring a non-conforming use into conformance with the residential zoning district.

Although the Board is supportive of the proposal, some changes to the plans are needed. The site plan should be updated to accurately reflect the new stairs that will be needed for both the main and secondary egresses, and any conflicts between the parking and side egress should be resolved, likely by pushing the secondary egress closer towards the rear of the building and bringing the parking closer to the front. The Planning Board believes some design changes to the structure's front façade would improve the new home's overall appearance, such as a transom window or roof extension over the front door to make the front entrance more prominent. The Board also suggests the applicant may want to modify the front façade windows to either keep some representation of the existing garage doors or to more clearly differentiate between them: as currently designed, the front windows are just slightly different from each other.

The Planning Board is pleased the parking immediately in front of the structure will be removed which will improve both the building's appearance and the streetscape. This removal, as well as the installation of a curb, should be shown on a final landscaping or site plan prior to issuance of a building permit. The parking on the side of the building has existed since the property's first subdivision in 1978, so its retention is not expected to be detrimental to surrounding properties. In addition, the parking easement on the property, for 21 Rice Street, is not anticipated to be impacted by this proposal.

**Therefore, the Planning Board recommends approval of the proposal and submitted plans, prepared by Osborn Studio and last dated 2/28/12, the site plan prepared by AGH Engineering and dated 10/16/08, subject to the following conditions:**

- 1 Prior to issuance of a building permit, final plans and elevations, both existing and proposed, indicating modifications to the doors, windows and roofline, including a relocation of the side porch, modification of the front facade, and slope roof details for drainage, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.

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2. Prior to issuance of a building permit, a final landscaping plan, indicating the paving to be removed in front of the dwelling, front curb details, the relocation of the parking to coordinate with the side porch and all fencing and new plantings on the property, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. No vehicles shall be parked within the front yard setback.
4. 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 register engineer or land surveyor; 2) final elevations, stamped and signed by a registered architect and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Laura Curtis, also delivered the comments of the Building Department for Michael Yanovitch, Chief Building Inspector. His comments were that the ultimate aim of zoning was to have all properties compliant. The proposal before the Board would bring the property into compliance as to use. The Building Department was supportive of the project and the conditions recommended by the Planning Board.

Board Member Hussey asked about the existing flat roof on the building and whether the petitioner would consider in the alternative some type of sloped roof. Mr. Lockwood said that he thought maintaining the lower flat roof would be more respectful of the concerns of some of the neighbors. Chairman Geller stated that all of the relief required could be granted by special permit and remarked that he had been the Chairman in the 2009 Board of Appeals case and was in favor at that time.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the requirements of **Section 9.05, Section 5.15.2, Section 5.43, Section 6.04.12** and **Section 8.02.2** of the Zoning By-Law have been satisfied and it is desirable to grant the Special

Permits in accordance with the relief requested. The Board makes 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 the requested relief subject to the following conditions:

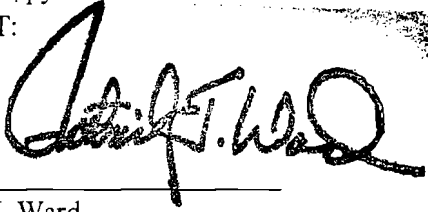
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2. Prior to issuance of a building permit, a final landscaping plan, indicating all counterbalancing amenities, including the paving to be removed in front of the dwelling, front curb details, the relocation of the parking to coordinate with the side porch and all fencing and new plantings on the property, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. No vehicles shall be parked within the front yard setback.
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Unanimous Decision of  
The Board of Appeals

  
Jesse Geller, Chairman

Filing Date: May 18, 2012

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals

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TOWN CLERK

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