



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

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PLANNING DEPT.
TOWN OF BROOKLINE

Town of Brookline
Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2012-0028

Petitioners, Jonathan and Meg White, applied to the Building Commissioner to construct a driveway and park two vehicles in the front yard at 29 Mason Terrace. The application was denied and an appeal was taken to this Board.

On April 26, 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 June 28, 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 June 21 and 28, 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: **White Jonathan and Meg**
Owner: **White Jonathan and Meg**

Location of Premises: **29 MASON TER**
Date of Hearing: **June 28, 2012**
Time of Hearing: **7:15PM**
Place of Hearing: **Selectmen's Hearing Room, 6th floor**

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

- 5.43; Exceptions to Yard and Setback Regulations, special permit required.**
- 6.04.5.c.1; Design of All Off-Street Parking Facilities, variance required.**
- 6.04.12; Design of All Off-Street Parking Facilities, special permit required.**
- 8.02.2; Alteration or Extension, special permit required.**

of the Zoning By-Law to construct a driveway and park two vehicles in the front yard of your property
at **29 MASON TER**

Said premise located in an **SC-7 (single-family and converted two-family)** residence. 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 were Chairman Jesse Geller and Board Members, Mark Zuroff and Lisa Serafin. The case was presented by the Petitioner Jonathan White. Mr. White waived reading of the notice.

Mr. White described the property as is an early auto garage with chauffer's quarters above that was constructed c. 1905. The garage is believed to have originally served the residence at 25 Mason Terrace, and was eventually subdivided and converted to a single family residence. Prior to the 2011 renovation, the majority of the first floor of the home was dedicated to a two-bay garage and the entire front yard in front of the home was paved and previously used for four rental parking spaces. The garage was converted to living area by the applicant, but the paved area in front of the house has remained and been used by the applicant for parking during construction.

Mr. White said he purchased the property in July 2011 and hired Lockwood Construction to gut-rehab the dwelling. Upon completion of the project in January, the dwelling was inspected and passed all inspections. Mr. White said that it was not until then that the parking issue was raised with him and that he was asked about his intention to to remove the non-conforming parking in the front yard setback and provide compliant parking per the Zoning Board of Appeals decision. Mr. White said it had always been his intent to construct a driveway and re-landscape the property. However, due to the cost of the completed renovations and his desire to construct the driveway using better materials , the new driveway had not been constructed. Rather than attempt to legalize his front yard parking as had been suggested by his lawyer, Mr. White decided to seek a grace period of one or two years to remove the existing parking in the front yard and construct the new driveway. This, he said, would give him more financial flexibility and allow him to construct the driveway properly in an as of right location.

Chairman Geller asked the Board if there were any questions. Board Member Zuroff asked the petitioner if he had a preliminary plan for the proposed new driveway. Mr. White said a preliminary plan was submitted to the Planning Board. However, he said he, would propose changes including shortening

the driveway to make room for a future garage. Mr. White said the existing curb cut would be closed and the non compliant front yard parking area would be landscaped at that time. Chairman Geller asked if the existing garage area was converted to living area. The petitioner stated that, yes, it has been converted.

Chairman Geller asked whether anyone in attendance wanted to speak in favor of the proposed relief. Kenneth Wile of 25 Mason Terrace rose to speak. Mr. Wile said he has no issue with the request provided the petitioner complies with the required setback and buffering. Mr. Wile gave a brief history of the neighborhood and the subject property.

Chairman Geller asked if anyone wanted to speak in opposition to the proposed relief. No one rose to speak.

Chairman Geller called on Courtney Synowiec, Planner to present the Planning Board's Recommendations.

Section 6.04.5.c.1 – Design of Off-Street Parking Facilities

Dimensional Requirements	Required	Existing	Proposed	Relief
Front Yard Setback	20'	n/a	0'	Special Permit

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

* Under **Section 6.04.12**, the Board of Appeals may waive dimensional requirements for parking to serve existing structures.

Section 8.02.2 – Alteration or Extension

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

Ms. Synowiec said the Planning Board is not supportive of this proposal. When the applicant applied for building permits predicated on the removal of the existing driveway and the construction of a new

driveway, those permits were granted with the understanding that the nonconforming front yard parking [and conforming garage parking] would be removed and new conforming parking would be built.

Although the Planning Board appreciates the applicant's desire not to use the side yard of their lot for parking, the Planning Board believes the applicant created their own hardship, and the proposal does not warrant zoning relief. The existing parking is not particularly attractive and is insufficient in length, thereby allowing for the potential for vehicles to overhang the sidewalk. Its retention would not be of any benefit to the streetscape or the neighborhood. While adding plantings, narrowing the driveway to 20', and replacing the asphalt pavement with cobblestones will improve the appearance of the front yard parking, there are a number of alternatives to front yard parking on this site, several of which would be minimally invasive to the side yard, and none of which would require zoning relief. Therefore, the Planning Board does not support this proposal.

Therefore, the Planning Board (1-4) denies the plans by Gunn Landscapes, dated 3/7/12.

The Chairman then called upon Michael Yanovitch, Chief Building Inspector, for the report from the Building Department. Mr. Yanovitch stated that the Building Department is not opposed to the request for relief, and noted the renovations undertaken were tastefully done and greatly enhanced the aesthetics of the property. Mr. Yanovitch said that should the Zoning Board of Appeals grant the requested grace period, he requests direction from the Board on how to enforce the decision given that a permanent Certificate of Use and Occupancy will issue. He said in a recent similar case before the Board, the purchaser of a particular property was left to seek relief for a decision that expired and the expiration was never enforced. Mr. Yanovitch asked what conditions could be provided to ensure compliance with the decision if a grace period or extension is granted.

Chairman Geller inquired what motivated the petitioner to return to the Zoning Board of Appeals and Board Member Zuroff asked what the current status of the project is. Mr. Yanovitch said that the

temporary Certificate of Use and Occupancy is expiring. Mr. Yanovitch stated that the property currently has a temporary Certificate of Use and Occupancy pending the construction of two conforming parking spots. Board Member Zuroff asked whether if relief were to be granted the petitioner would receive another temporary Certificate of Use and Occupancy. Mr. Yanovitch stated that the petitioner would receive a permanent Certificate of Use and Occupancy, which is the reason for his inquiry about enforcement. Chairman Geller said he appreciates the fact that the petitioner wants to take his time, garner his financial assets and do a good job, however, the Zoning Board of Appeals granted the relief previously requested that allowed the petitioner to gain the benefit of constructing improvements to the ground floor subject to removal of the parking in the front yard and construction of the driveway and new parking area in compliance with the Zoning By-Law. Chairman Geller said he understands the Planning Board's hesitation and he shares the same hesitation.

Mr. White said it is not in his best interest to keep the parking in the front yard. He said the property is more valuable without the parking in the front yard so it is financially practical for him to remove the parking from the front yard. Board Member Serafin asked how long temporary Certificates of Use and Occupancy remain in effect. Mr. Yanovitch said they can be issued for terms of 3 or 6 months and may be extended for up to a year. Board Member Zuroff asked whether construction of the driveway would require issuance of a building permit. Mr. Yanovitch said yes. Board Member Zuroff asked if the petitioner would also have to obtain approval from public works to cut the curb. Mr. Yanovitch said yes. Mr. Zuroff then asked how long the permit process for the driveway would take and how long it would be before the permit expired. Mr. Yanovitch said the permit process would take a couple of weeks at most and the permit once issued is valid for six months if no work is conducted. However, if work commenced, and a good faith effort was made towards completion, the permit would not expire at all.

Board Member Zuroff asked the petitioner if he had explored doing temporary driveway work. Mr. White said he has not because of the cost and the logistics of hiring a contractor that is bonded to make a curb cut in the Town. Mr. White said the pool of contractors that handle that type of work is much smaller than the pool of contractors that do remodeling. Mr. Zuroff asked if the petitioner had an estimate for the cost of the work. Mr. White said he had just put it out to bid and had one estimate of \$20,000.00 from the contractor who renovated the house. Board Member Zuroff asked if that was for a complete driveway. Mr. White said it was for a complete asphalt driveway and curb cut.

Board Member Zuroff said the Board has a choice either to amend the relief previously granted by extending the time to comply with the condition requiring removal of the parking in the front yard and construction of the new driveway and parking for a short period or mandate that the applicant comply with the decision now. Board Member Serafin said she thinks the applicant was before the Board prematurely. She said he should probably take more time to explore his options and return to the Board prior to his temporary Certificate of Use and Occupancy expiring. Board Member Zuroff asked if relief is not granted what enforcement action would be taken. Mr. Yanovitch said it raises an interesting question because the vehicles in the front yard are technically in violation of the prior decision. Chairman Geller said that since the petitioner has already received the benefit he sought from the prior requested relief, the petitioner should comply with the conditions of the decision, namely, remove the front yard parking and build the driveway and parking as required. Chairman Geller said in his opinion the appropriate steps would be for the three month temporary Certificate of Use and Occupancy to be extended by Mr. Yanovitch for a period of three additional months, during which time, the petitioner should apply for the required permits and start and complete the work. If more time is needed, the petitioner can make application with the Building Department for further extensions of his temporary

Certificate of Use and Occupancy. The Zoning Board of Appeals then voted to deny the requested relief (and amendment of the prior decision).

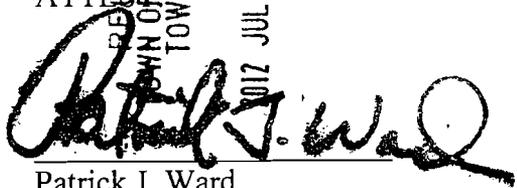
Unanimous Decision of
The Board of Appeals



Jesse Gellet, Chairman

Filing Date: July 13, 2012

A True and Correct
ATTEST



Patrick J. Ward
Clerk, Board of Appeals

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