



Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Christopher Hussey

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Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043

Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2012-0039

Petitioners, Heshey and Ellen Marcus, applied to the Building Commissioner for permission to install a new driveway along the right side of their property at 115 Clark Road. The application was denied and an appeal was taken to this Board.

On 10, May 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 12, July 2012, at 7:00p.m. in the Selectmen's Conference Room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, 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 28 and July 5, 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: **MARCUS HESHEY & ELLEN**  
Owner: **MARCUS HESHEY & ELLEN**  
Location of Premises: **115 CLARK RD**  
Date of Hearing: **July 12, 2012**  
Time of Hearing: **07:00 PM**  
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. **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
2. **6.04.5.c.2; Design of All Off-Street Parking Facilities, variance required.**
3. **6.04.12; Design of All Off-Street Parking Facilities, special permit required.**
4. **8.02.2; Alteration or Extension, special permit required.**
5. **\*5.91; Minimum Useable Open Space, variance required.**

Of the Zoning By-Law to install a new driveway along the right side of your house and abandon the existing driveway

at **115 CLARK RD**

Said premise located in a S-10 (**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.*

**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 Lisa Serafin. Miriam Spear, architect, presented the case for the petitioner.

Ms. Spear described the property at 115 Clark Road as a single-family dwelling with a two-gabled roof and brick exterior. The dwelling abuts the MBTA Green “D” Line tracks at the rear. Ms. Spear said the property has recently undergone extensive renovation as well as a garage addition. She said during the course of construction the contractor installed a temporary driveway to access the site. The homeowners are now seeking to finish this driveway and make it their permanent driveway and remove the previous driveway. Ms. Spear said it would be difficult to access the new garage from the previous driveway. Ms. Spear stated that the petitioners propose to install landscaping within the area of the removed previous driveway and elsewhere as the required counterbalancing amenity under **Section 5.43** of the Zoning By-Law.

The Chairman then asked if anyone in attendance wished to speak in support of the petitioner’s proposal. No one rose to speak. The Chairman asked if anyone wished to speak in opposition to the requested relief. No one rose to speak

The Chairman then called on Lara Curtis Hayes, Planner, to deliver the findings of the Planning Department.

## **FINDINGS**

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

**Section 6.04.5.c.2 – Design of All Off-Street Parking Facilities: Side yard setback for driveways and parking facilities**

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

Dimensional Requirements	Required	Proposed	Relief
Side yard setback – driveway	5 feet	2.6 feet	Special Permit*/Variance

\* Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. Alternatively, under **Section 6.04.12**, the Board of Appeals may waive dimensional requirements for new parking facilities to serve existing structures when it's necessary to permit the installation of some or all of the off-street parking spaces that would be required for a similar new building.

**Section 8.02.2 – Alteration or Extension**

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

Ms. Hayes said the Planning Board is supportive of the proposal to move the dwelling’s main driveway to the other side of the house, as only on that side of the dwelling will the driveway appropriately serve the newly-constructed addition. The proposed drive is further away from the lot line than the previously-used drive, and vegetative screening is already in place. The plan should be modified though to limit the new curb cut to 12 feet. Otherwise, the proposal is reasonable and appropriate given the property’s narrow width.

**Therefore, the Planning Board recommends approval of the plans by Miriam Tropp Spear, dated 5/8/2012, subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan 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 landscape plan, indicating all counterbalancing amenities and the removal of the existing driveway, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the 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 registered engineer or land surveyor; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. Mr. Yanovitch said the Building Department has no issue with this request for relief and, if relief is granted, will work with the petitioners to ensure compliance with the Building Code as well as any conditions the Board may impose as part of their decision

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant the Special Permit relief requested by the petitioners and that the petitioners have satisfied the requirements necessary for relief under **Sections 5.43, 6.04.12, 8.02.2, and 9.05** of the Zoning By-Law and 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.

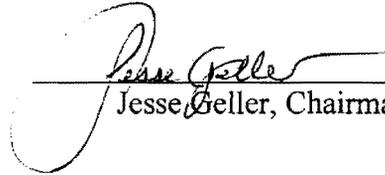
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan 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 landscape plan, indicating all counterbalancing amenities and the removal of the existing driveway, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the 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 registered engineer or land surveyor; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of

The Board of Appeals

Filing Date: August 28, 2012

  
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Jesse Geller, Chairman

A True Copy

ATTEST:



\_\_\_\_\_  
Patrick J. Ward  
Clerk, Board of Appeals