



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

RECEIVED  
JAN 13 2012  
**Town of Brookline**  
Massachusetts

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. 2012-0070

Petitioner, Ed Doherty, applied to the Building Commissioner for permission to construct a driveway in the front yard of 324 Heath Street. The application was denied and an appeal was taken to this Board.

On December 6, 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 January 24, 2013 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 January 3, 2012 and January 10, 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: DOHERTY ED**

Owner: **DOHERTY ED**  
Location of Premises: **324 HEATH ST**  
Date of Hearing: **January 24, 2013**  
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. **5.43; Exceptions to Yard and Setback Regulations**
2. **5.50; Front Yard Requirements**
3. **6.04.5.c.1; Design of All Off-Street Parking Facilities**

of the Zoning By-Law to construct a parking area **Construct a driveway in front yard**  
at **324 HEATH ST**

Said premise located in a **S-40 ( 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, Enid Starr, and Board Members Mark Zuroff and Jonathan Book. Attorney Kenneth Hoffman of Holland and Knight, 10 Saint James Avenue, Boston, presented the case for the petitioner.

Attorney Hoffman described the property as a newly-created lot next to Pine Manor College on a slight curve of Heath Street. Except for the college, the neighborhood is residential, with large single-

family dwellings on surrounding properties. The lot slopes down gradually away from Heath Street and has some large trees.

Mr. Hoffman said his client, Edward Doherty, wishes to construct a second driveway to go in front of the new dwelling and connect to the main driveway and turn around area that has already been issued a building permit (as part of construction for the dwelling). A new 15-foot-wide curb cut directly in front of the home would provide the secondary access, and the driveway would curve immediately to the left to connect to the other vehicular access and turn around area. The driveway would be 14 feet wide and approximately 9.8 feet from the front lot line. He said the relief needed could be granted under section 5.43 of the Town of Brookline Zoning By-Law. Attorney Hoffman said there would be landscaping installed that would screen the driveway from the street. He said he was confident the screening would suffice for a counterbalancing amenity. Blaire Hines, landscape architect presented the design details to the Board.

Chairman Starr said she was concerned about safety and the effect of adding a second curb cut. Blaire Hines said he felt the second curb cut would allow for an easier transition in and out of the lot with one curb cut serving as the entrance and the other serving as the exit. Member Zuroff asked if it is possible to have the driveway extend to the front of the house but still only have one curb cut. Mr. Hines said it is possible, however, the same relief would be needed.

The Chairman asked whether anyone in attendance wished to speak in favor of the proposal. No one rose to speak. The Chairman asked if anyone in attendance wished to speak in opposition of the proposal. Bob Basile of 333 Heath Street spoke in opposition Mr. Basile said he was not necessarily

speaking in opposition but just wanted to voice his opinion. He said if the driveway were to be approved it would be setting a precedent and he does not believe that it is a positive, safe precedent.

Tim Richard, Planner for the Town of Brookline, delivered the findings of the Planning Board.

**FINDINGS**

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

**Section 5.50 – Front Yard Requirements**

**Section 6.04.5.c.1 – Design of All Off-Street Parking Facilities:** The surfaced area of a parking lot and all entrance/exit drives shall be set back from the front lot line the distance specified for building front yard setback.

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Front Yard Setback --</b>	30 feet	n/a	9.86 feet	Special Permit*

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

Mr. Richards said the Planning Board does not oppose the proposed circular driveway, although a larger setback would have been preferable. Due to the location of the house and the narrowness of the lot, this was not possible. The driveway surface will be constructed with granite and concrete unit paving, which is more attractive than plain bituminous concrete, and new landscaping will screen it from Heath Street.

**Therefore, the Planning Board recommends approval of the proposed site plan by D & A Survey Associates dated 9/5/12, and the proposed landscape plans by Blair Hines Design Associates dated 10/31/12 subject to the following conditions:**

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, indicating all dimensions, vehicular areas and materials, and pavers used for the circular driveway, 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, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. No permanent parking be allowed within the front yard setback.
4. 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.

Michael Yanovitch, Chief Building Inspector, delivered the comments for the Building Department. Mr. Yanovitch said the Building Department has no objections to the requested relief. He said the only part of the proposal that needs relief is the portion of the proposed driveway that runs parallel to the front lot line and that relief would only require a special permit for front yard setback. Mr. Yanovitch said there is no limit on the number of curb cuts at a residential property.

Member Book said he feels the addition of the second curb cut would make the access safer and the relief requested is minimal. Member Book said he believes the applicant has satisfied the requirements of relief by special permit. Chairman Starr said she agreed. Mr. Yanovitch added that there would still be a review for safety and compliance by the Building Department and the Town Engineering Department

The Board then determined, by unanimous vote that the requirements for a special permit for **Sections 5.43; 5.50** were met. The Board made the following specific findings pursuant to said **Section 9.05:**

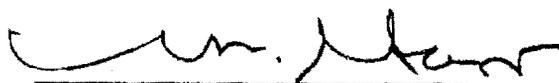
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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, indicating all dimensions, vehicular areas and materials, and pavers used for the circular driveway, 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, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. No permanent parking be allowed within the front yard setback.
4. 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: March 11, 2013



Enid Starr, Chairman

A True Copy  
ATTEST:

RECEIVED  
 TOWN OF BROOKLINE  
 TOWN CLERK  
 MAR 11, 2013  
 8:41 A  
 Patrick J. Ward  
 Clerk, Board of Appeals  
 2013