



BOARD OF APPEALS
Enid Starr, Co-Chair
Jerse Geller, Co-Chair
Robert De Vries

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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. 2011-0021

Petitioner, Fern Kanter, applied to the Building Commissioner for permission to construct a parking space in the front yard of her property at 89 Winthrop Road. The application was denied and an appeal was taken to this Board.

On April 7, 2011, 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 May 12, 2011 at 7:30 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 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 April 21 and 28, 2011, 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: **FERN KANTER**
Owner: **FERN KANTER**
Location of Premises: **89 WINTHROP ROAD**
Date of Hearing: **May 12, 2011**
Time of Hearing: **7:30 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th. 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. **6.04.5a; Design of All Off Street Parking Facilities, variance required.**
3. **6.04.5b; Design of All Off Street Parking Facilities, variance required.**
4. **6.04.12; Design of All Off Street Parking Facilities, special permit required**

of the Zoning By-Law to **construct a parking space in the front of the yard of the property located at 89 WINTHROP ROAD**

Said premise located in a **M-1.0 (apartment house)** 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 was Chairman, Enid Starr and Board Members, Lisa Serafin and Mark Zuroff. The petitioners were represented by Attorney Diane Gordon, 10 Winthrop Square, Boston, MA 02110-1264. The petitioner, Fern Kanter, as well as her landscape designer Blair Hines of Blair Hines Design Associate were also in attendance.

BACKGROUND

November 10, 1981, Board of Appeals case #2503 – The Board of Appeals granted relief to legalize the conversion of the two-family dwelling into a three-family dwelling and establish four parking spaces, two of which would be tandem. The Board of Appeals specifically denied the request to create a front-yard parking space on the eastern portion of the front yard next to Winthrop Path as part of that proposal.

May 22, 2008, Board of Appeals case #080012 – The Planning Board voted (2-1) to support the proposal to create a 10.7' x 18' front-yard parking space on the eastern portion of the front yard next to Winthrop Path. However, the Board of Appeals denied the proposal because they felt the applicant did not meet the grounds for a variance to address the width of the parking facilities. The By-Law has subsequently changed and the proposed driveway width no longer requires variance relief (see, Section 6.04.12).

SITE AND NEIGHBORHOOD

89 Winthrop Road is a 2 ½-story, three-family dwelling located on the south side of Winthrop Road immediately adjacent to Winthrop Path, near Washington Square.

Currently the west side of the front yard is paved to provide parking for four cars, two of them tandem. The rest of the front yard is landscaped. The lot slopes dramatically down from the front lot line toward the rear lot line, and a large retaining wall with a fence runs along the side and rear lot lines. The rear of the lot is landscaped. Other properties in the immediate neighborhood include two- and three-family residential dwellings. Many of these dwellings also have multiple front yard parking spaces.

APPLICANT'S PROPOSAL

The applicant, Fern Kanter, is proposing to install a parking space in the eastern portion of the front yard next to Winthrop Path. Currently this area is landscaped and has a small retaining wall and brick walkway. The proposed parking space would be 13.5 feet wide by 15.5 feet deep and would be located immediately next to the side lot line along Winthrop Path. The applicant is proposing to pave the driveway with concrete pavers and construct a new set of masonry stairs to connect to the existing wood stairs that lead to the lower level unit's entrance. The applicant is also proposing to install new landscaping along Winthrop Path as well as new landscaping in the front yard.

Attorney Gordon walked the Board through the zoning history of 89 Winthrop Road including the provision of on-site parking particularly for Unit 3. Ms. Gordon explained that a failure to allocate parking stalls in 1981 (ZBA case #2503) left Unit 3 with no parking while Units 1 and 2 have two spaces each. Initially, neighborhood rental parking was available to petitioner but with changed demographics in the area that is no longer the case. There are many residences in the area with front yard parking spaces and most not nearly as attractive as those proposed herein. Ms. Gordon noted that the proposed site for one parking space at the east side of the residence was the site chosen by the abutters despite the necessity of a (second) curb cut at the site.

Ms. Gordon introduced Blair Hines, the project's landscape architect, who showed the Board photos of the site and adjoining properties and the proposed landscaping that will include flowering trellis work, permeable pavers and appropriate screening for abutters.

Mr. Hines advised that the (Ash) street tree will be preserved if possible and/or replaced and moved west from the new driveway at petitioner's expense and with the guidance of the Tree Warden.

Finally, the petitioner agreed to move the new driveway at least 4' from the Winthrop Path as requested by this Board.

In discussing the zoning relief required, Ms. Gordon pointed out that Section 6.04.14 originally required a variance for the project but with its amendment effective in 2010, the project may be accomplished by Special Permit pursuant to Section 6.04.12 allowing the Board to waive dimensional requirements for new parking facilities to serve existing buildings.

The Board may if it deems Section 6.04.12 does not apply, grant a Special Permit pursuant to Section 5.43 if a counterbalancing amenity is provided which in this case would be landscaping, new fencing, new retaining wall and permeable driveway pavers. Finally, a Special Permit under Section 8.02.2, Alteration or Extension of a pre-existing non-conformity, is appropriate.

Ms. Gordon also suggested that the Board should modify case #2503 to clarify certain of the conditions appended thereto (#'s 3 and 4) and the Chair agreed.

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

Letters in support of the proposal were received from Anne Forman of 89 Winthrop Road, Unit #1 and Donna Sicilano also of 89 Winthrop Road, Unit #2. Those two unit

owners along with Ms. Kanter comprise all the owners of 89 Winthrop Road. A letter was submitted from Elizabeth Ross of 2 Gardner Road who suggested “there is no rationale for denying this plan”. Julia Roboff of 2 Gardner Road, #3, Yevgeny Ioffe of 92 Winthrop Road, #3 and Howard Hecht of 92 Winthrop Road, #1 sent letters in support. In attendance at this Board’s hearing were Peter Cameron of 92 Winthrop Road, #2 and Anne Forman of 89 Winthrop Road. Ms. Forman noted that she was pleased with the proposed design and that Ms. Kanter had already done a great deal to improve the structural integrity of Winthrop Path with a new retaining wall in 2008. Mr. Cameron advised the Board that this proposal addressed safety and aesthetic improvements to the immediate area.

Two Brookline residents, Werner Lowe of Salisbury Road and Linda Olson Pelkhe of Browne Street appeared and spoke in opposition to the proposal. Mr. Lowe referred to a letter he submitted that set out his opposition in more detail but opined that this proposed parking space would contribute to the decline of an attractive street and would allow a car to be parked adjacent to Winthrop Path. Ms. Olson Pelkhe also submitted a letter and remarks to the Board opining that this proposal was not in the best interests of the public in that it degrades the streetscape and would encourage more front yard parking.

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

Section 6.04.5.a – Design of All Off-Street Parking Facilities

Section 6.04.5.b – Design of All Off-Street Parking Facilities In M-1.0 districts, the surfaced area of a parking lot and all entrance and exit drives shall be set back a minimum of 10 feet from all street lot lines and 5 feet from all other lot lines.

<u>Proposed Driveway</u>	<u>Required/Allowed</u>	<u>Existing</u>	<u>Proposed</u>	<u>Relief</u>
Parking Area Front Setback (Winthrop Road)	10 feet	n/a	0 feet	Special Permit*

Parking Area Front Setback (Winthrop Path)**	10 feet	n/a	2 feet	Special Permit*
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*Under Section 6.04.12 the Board of Appeals may waive dimensional requirements for new parking facilities to serve existing buildings. Should the Board of Appeals find Section 6.04.12 does not apply, the Board of Appeals may also waive dimensional requirements under Section 5.43 if a counterbalancing amenity is provided. The applicant is proposing to provide a new retaining wall and landscaping adjacent to Winthrop Path as well as a parabolic mirror to allow pedestrians to see vehicular activity in the proposed parking space.

**Under Section 2.19.4 of the Zoning By-Law, Winthrop Path is considered a "street", and the side lot line is also a street lot line.

Section 8.02.2 -- Alteration or Extension

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

Ms. Synowiec said that the Planning Board was not generally supportive of this proposal to construct an additional parking space on this property. While the applicant has presented a fairly attractive proposal for a new front yard parking space, the Planning Board notes this structure is already served by an existing parking area that provides parking for four cars and believes an additional space separate from that driveway will have a detrimental impact on the neighborhood. The Planning Board feels the proposed space is too shallow and does not maintain a sufficient setback from Winthrop Path. As the pathway was specifically designed for pedestrian use, locating a parking space with 2' of the path (which is on a hill and has walls on both sides of it that limit visibility) will create a safety hazard for pedestrians. The Planning Board also notes there is a street tree next to the proposed parking space, there is a potential hazard for the tree to be damaged by an existing vehicle, particularly in inclement weather. The Planning Board encouraged the applicant to consider an alternative design and suggests the applicant consider expanding their existing parking area to accommodate an additional vehicle.

requiring transportation and in some cases additional vehicles. He said because of the topography finding suitable conforming parking on the relatively small lots is difficult. He explained that the problem is exacerbated by the Town ordinance preventing overnight parking on the roadway. Mr. Shepard said that the petitioner went to considerable expense several years ago to reconstruct a failing retaining wall to protect Winthrop Path. He said he recognized that additional parking in the front yard will undoubtedly lead to a change in the appearance in the streetscape but he felt that given the support provided by the neighbors of the proposal, that the Building Department was supportive in this case. Addressing one Board member's concern regarding the proximity to Winthrop Path he said perhaps the petitioner should consider lowering the planned fence near the top of the Path to provide pedestrians with an early warning of the presence of her vehicle.

The Board then deliberated with extensive discussion and asserted front yard parking is always problematic but that circumstances sometimes dictate its necessity. The Chair acknowledged the difficulty imposed by the lot's steep grade at the rear of the residence. She opined that a home on this steep hill with visibility impaired should have on-site parking for the owner's personal safety.

Ms. Starr advised that she was troubled by the fact that the neighbors are in support and two people who don't live in the neighborhood are against it.

Mr. Zuroff expressed concern for the safety of pedestrians coming up Winthrop Path right next to the proposed driveway and it was suggested that the new fence be reduced in height at the head of the path so pedestrians in the path can see moving cars in the

driveway earlier. A parabolic mirror was suggested by Ms. Gordon to further improve visibility.

Ms. Serafin allowed that she felt somewhat "conflicted" by this proposal; however, with the above safety provisions in place, she was more comfortable. All agreed that Ms. Kanter who was doing everything properly should not be punished by those who ignored our by-laws.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant a Modification of ZBA Case #2503 and Special Permits and that the petitioner has satisfied the requirements necessary for relief under Section 6.04.12 and 8.02.2. The Board also 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 property operation of the proposed use.

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

- 1. Prior to issuance of a building permit, a final landscaping plan, indicating plant and paving materials and a fence design to increase visibility from Winthrop Path shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2. No portion of any vehicle parked in the dwelling's parking facilities shall overhang the public sidewalk.**

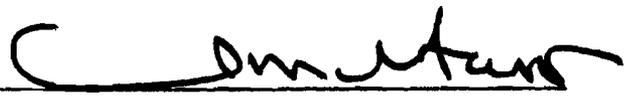
3. The public street tree located in front of the dwelling shall be replaced with a new street tree, at the applicant's expense, to a more optimal location, subject to the review and approval of the Town's Tree Warden. Should the Tree Warden determine retaining the existing tree is more desirable, the tree shall be protected from damage during construction of the parking area.
4. The parking area shall be moved away from Winthrop Path by a minimum of 4 feet.
5. 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 registered engineer or land surveyor, indicating details regarding the new curb cut and the walkway and stairs leading to the parking area; 2) final elevations of any retaining walls for the parking area, indicating materials, stamped and signed by a registered engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

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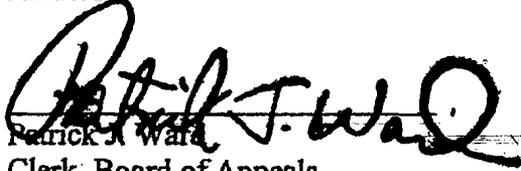
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Enid M. Starr, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals