



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

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TOWN OF BROOKLINE  
*Town of Brookline*  
Massachusetts

Town Hall, 1<sup>st</sup> Floor  
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Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043  
Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2011-0041

Petitioner, Hamilton Park Towers LLC, applied to the Board of Appeals to renew a special permit to provide 28 parking spaces for off-site residents and modify previous ZBA decision #2010-0020.

On June 30, 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 August 11, 2011, 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 July 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: **HAMILTON PARK TOWERS LLC**  
Owner: **HAMILTON PARK TOWERS LLC**  
Location of Premises: **175 FREEMAN ST**  
Date of Hearing: **August 11, 2011**

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 modify Board of Appeals case #2010-0020 extend the time period and expand the radius from 1000 to 1400 feet.

Of the Zoning By-Law to **UTILIZE EXCESS PARKING IN UNDERGROUND GARAGE FOR NON-RESIDENT USE** at **175 FREEMAN STREET**.

Said premise located in a **M-2.0 (multi-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.*

**Enid Starr  
Jesse Geller  
Robert De Vries**

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 Jonathan Book and Mark Zuroff. The case was presented by Mr. Fred Lebow of FSL Associates, 358 Chestnut Hill Ave # 1 Brighton, MA 02135-7782.

Mr. Lebow stated that his client, Hamilton Park Towers LLC, had previously been before the Board of Appeals and was granted a special permit to allow for 28 off-street parking spaces to be rented to Brookline residents residing within 1,000 feet of the property. The relief had a one-year sunset date and expires 8/12/11.

Mr. Lebow described the site and neighborhood as a 409 unit, 9 story brick H-shaped apartment building constructed in 1974. It is located within one entire town block, bounded by Freeman, Saint

Paul, Thatcher and Pleasant Streets, in northeast Brookline. A central entrance/courtyard with circular drive and drop-off is located on Freeman Street. The building consists of 76 one bedroom units, 71 three bedroom units, and 262 two bedroom units. There are a total of 396 parking spaces on site; 182 outdoor spaces and 214 garage spots, 14 of which are tandem. 163 outdoor spaces and 151 garages spaces are currently rented, leaving a delta of 62 unrented parking spaces. Entrances to the two parking levels are located on Thatcher Street. Currently, there is only one loading dock for trucks serving trash removal and moving activities with access to Saint Paul Street.

Mr. Lebow said that his client is proposing to continue to rent 28 parking spaces in their underground garage to off-site Brookline residents who reside within a 1,400 ft. radius from the subject property. Mr. Lebow said that they originally sought relief to rent parking to residents within 1,000 feet but due to extremely low demand they are now seeking to modify the previous decision to allow for the full 1,400 ft. radius allowed by special permit.

Mr. Lebow reported that since the building has come under the current ownership, complaints regarding traffic and noise related to their residents are down and they have undertaken numerous projects to beautify the landscaping and increase the safety of the building. He said that the management's interpretation of the previous Board of Appeals decision was that spaces could be rented only to owners of vehicles registered in Brookline. Mr. Lebow reported that of the 15 inquiries regarding parking all but two of the vehicles were registered out of state. He said that he now understands that the Use # 22 provides for the parking of vehicles of residents within 1400 feet regardless of where the vehicle is registered. He said that management could develop a method to determine where the residents lived and could provide that information if required.

Board Member Book asked whether the request to expand the radius would increase traffic. Mr. Lebow reported that most of the expanded area is in Boston and the area in Brookline is mostly single

family homes. Mr. Lebow said that his client last year applied for the reduced radius of 1000 feet to test the market relative to the need for parking. He said that given the minimal applications for parking that 1400 feet would be more appropriate. Mr. Book asked how the two people that currently park in the garage access their vehicles. Mr. Lebow said that currently pedestrians enter and leave through the lobby. As to the separate door that was suggested by the Planning Board in the previous case, Mr. Lebow stated that until there is more demand, it is not financially feasible to install the door. Board Member Zuroff asked whether the petitioner wished to expand the time-line for further Board of Appeals review. Mr. Lebow responded that a longer time-line could reveal a more realistic experience factor for future decisions regarding the proposal.

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

Two nearby neighbors spoke in opposition to expanding the radius to 1400 feet. They reported that most of the homes are not single family homes as reported but that there are many multi-family homes and condominiums within the expanded area and this would result in greater traffic pressures on the neighborhood. One neighbor advised that most of the out of state vehicles belong to students that have been historically a problem in the neighborhood. One stated that students residing in the neighborhood for nine months at a time are not really residents of Brookline as anticipated in Use # 22. She said that the extra vehicles in the garage will overburden Thatcher Street relative to traffic. Both neighbors agreed that perhaps the petitioner should be required to come back before the Board of Appeals in 15 months to evaluate the success of the increased radius. Mr. Zuroff asked those in opposition to the proposal how the expansion of the radius would have any effect on the behavior of those that use the garage. One neighbor reported that more people that use the garage will leave their car and walk around the neighborhood to get to their parties.

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

**Table of Uses, Use #22:** The Board of Appeals may grant by special permit, residential parking or parking area for the storage of cars of other residents of other lots located 1,400 ft. of the subject property.

Ms. Synowiec reported that when this request was initially submitted in 2010, the Planning Board and Zoning Board of Appeals considered the concerns voiced by neighbors about safety and traffic issues. As a result, the Zoning Board of Appeals set a one year sunset date for the relief to ensure the efficacy of the safety and security measures to address those concerns. The applicant states that, since that time, several measures have been implemented, including improved circulation through the site; better access from Thatcher Street; installation of a mirror at the garage entry; periodic inspections by police; relocation of deliveries and cabs to the Freeman Street side, and management personnel on the site. Ms. Synowiec said that the Planning Board was also supportive of extending the rental radius from 1,000 feet to 1,400 feet for those who reside in Brookline in order to be consistent with the use category in the Zoning By-Law (Use #22) for renting spaces to off-site residents. The applicant has stated that only two spaces have been rented thus far and that the increased radius might result in more renters. Since there are so few renters at present it is difficult to determine any impacts, so the Planning Board recommended a condition that the applicant return in three years for further evaluation. Therefore, the Planning Board recommended approval of the renewal of the special permit to rent 28 parking spaces and extend the allowable rental radius to 1,400 feet, subject to the following conditions:

1. This relief shall expire three years from the date of this decision, unless extended by the Board of Appeals.
2. At the point that twenty parking spaces are rented to off-site Brookline residents, the applicant shall install a door to the garage, with a pedestrian path to the door, in conformance with the state building code and subject to the review and approval of the Assistant Director of Regulatory Planning.
3. The applicant shall submit to the Building Commissioner for review and approval to ensure conformance to the Board of Appeals decision: 1) evidence the Board of Appeals decision has been recorded at the Registry of Deeds within forty days of the filing of this decision.

The Chairman then called upon Michael Shepard, Building Commissioner, for the report from the Building Department. Mr. Shepard outlined the specifics of Use #22 in the Zoning By-Law. Specifically he said it referred to the storage of cars of residents of other lots within 1400 feet. He reported that there was no inference regarding where the vehicles were registered by the residents and opined that enforcement of that restriction likely falls within the purview of someone at the state level. Mr. Shepard reported that since the facility came under new ownership, complaints have fallen dramatically regarding the behavior of its residents. Mr. Shepard said that when the petitioners appeared before the Board last year, they on their own volition reduced the allowed radius to 1000 feet of the facility. At the time he said they had no real evidence of the impact the parking might have and in an effort to placate the concerns of the neighbors they reduced the area from which they could draw potential parking customers; now of course they have found that the smaller base has had little, if any impact and they would like to draw from the allowed area. Mr. Shepard suggested that if the Board wished to have the petitioner return after some time period he suggested that the period be longer than a year to provide a more accurate measurement of the impact on the neighborhood.

Chairman Geller stated that the size of the area from which the petitioner would draw potential customers would, given the history of the last year, probably have very little impact on the neighborhood. As to a suggestion regarding review of old traffic studies, Chairman Geller said that it has been his experience that studies done in 1975 might have little bearing on today's conditions. Regarding the extension of the time frame for the petitioners to come back before the Board, he suggested that it be longer than one year in order to provide a more

valid assessment of the impact on the neighborhood. Chairman Geller referring to this case and others involving student populations opined that he was concerned about potentially discriminatory practices directed toward one segment of society over others.

Board Member Zuroff spoke of the potential advantage to the neighborhood of taking 28 vehicles off the street and storing them in the petitioner's underground garage. He said the answer is not to widen the street but to reduce the number of vehicles on the street. He said that the 28 spaces in question will have very little impact on the neighborhood if anything he said the impact would be positive. Mr. Zuroff said zoning cannot be used to control immature student behavior. He said that the three year review requested by the petitioner might be a little long but said he was in favor of allowing the radius being expanded to the 1400 feet allowed in Use #22.

Board Member Book stated that he too was in favor of expanding the radius of the radius. Regarding the time frame, Mr. Book said he would support a decision requiring return of the petitioner in 18 months.

Accordingly, the Board voted unanimously to modify the relief granted in Case #2010-0020 to increase the radius from which the petitioner could draw potential customers to 1400 feet and to require the petitioner to return to the Board within 18 months to review the impacts and consider further relief or conditions as determined by the Board of Appeals. The conditions from Case #2010-0020 remain the same with the exception of the changes underlined as follows:

- 1. Prior to the rental of any spaces, the applicant shall submit a final parking and site layout plan, including the demarcation of at least 10 parking spaces on site for guests of Dexter Park residents, any traffic control devices (gates, signage, speed bumps, etc.), the loading dock areas, and the drop-off area off Freeman Street, subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2. The petitioner shall submit to the Building Commissioner annually, a list of the addresses and registration numbers of clients utilizing any of the 28 available spaces in the garage to insure compliance with use #22. The petitioner shall provide evidence that residency was established by presentation of proof by those wishing to rent spaces.**
- 3. Renters of the available spaces shall live within a 1400 foot radius of 175 Freeman Street.**
- 4. This relief shall expire initially in 18 months from the date of this modification, unless extended by the Board of Appeals after a finding that the parking and rental plan is working effectively.**

5. The petitioner shall provide signage on both sides of the garage door directing that all pedestrians not use the garage doors for entrance/exit; that all entrance/exit be through the main lobby.
6. Prior to the rental of any spaces, the applicant shall submit to the Building Commissioner for review and approval to ensure conformance to the Board of Appeals decision: 1) a final parking and site lay-out plan and 2) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

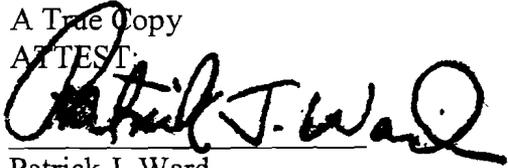
Unanimous Decision of  
The Board of Appeals

Filing Date: September 8, 2011

  
Jesse Geller, Chairman

A True Copy

ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals

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