



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

# *Town of Brookline*

## *Massachusetts*

Town Hall, 1<sup>st</sup> Floor  
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**Patrick J. Ward, Clerk**

**TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2011-0048**

Petitioner, Durban Trust, applied to the Building Commissioner for permission to implement attended parking thereby creating 31 additional parking spaces on their parking lot at 1268 Boylston Street. The application was denied and an appeal was taken to this Board.

On August 25, 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 September 22, 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 September 1 and 8, 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: DURBAN TRUST**  
**Owner: DURBAN TRUST**

Location of Premises: **1268 BOYLSTON STREET**  
Date of Hearing: **September 22, 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 for a variance and/or special permit from:

- 1. 6.04.2.g; Accessible parking, variance required.**
- 2. 6.04.3; Valet parking, special permit required.**
- 3. 6.04.6.a; Lighting shielded from other properties, variance required.**
- 4. 6.04.12; Exceptions to dimensional requirements for new parking for existing structures, special permit required.**
- 5. Modification as appropriate of Board of Appeals cases #3399 and #3399A**

of the Zoning By-Law to **MODIFY THE EXISTING PARKING LOT AT THE SUBJECT ADDRESS BY CONVERTING TO VALET PARKING THEREBY CREATING 31 ADDITIONAL PARKING SPACES** at 1268 BOYLSTON STREET.

Said premise located in a **G-2.0 (general)** business 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**

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, Mark G. Zuroff and Lisa Serafin. The case

was presented by the attorney for the petitioner, Rick Mann, Esquire, The Law Office of Richard S. Mann, 196 Bridle Trail Road, Needham, MA 02492.

The Planning Board report dated September 9, 2011 provided the zoning history of the subject parcel:

**Board of Appeals, Case # 3398 (6/18/97)** – The Board of Appeals granted special permits for a retail/office building and a parking garage at 1268 Boylston Street with three loading bays.

**Board of Appeals, Case # 3399 (6/18/97)** – The Board of Appeals granted special permits to consolidate parking on the east and west sides of Tully Street to just the west side of Tully Street at 1268 Heath Street. The decision further clarified the 75 remote parking spaces in this lot required to serve Chestnut Hill Plaza could be provided either in the surface lot or the proposed parking garage referred to in Case # 3398.

**Board of Appeals, Case # 3444 (6/4/98)** – A revised loading bay plan was approved reducing the number of bays from two bays to one. The proposed building and garage were ultimately never built.

Mr. Mann was accompanied by a representative of Durban Trust, Mr. Robert Muscaro, as well as Ms. Adrienne Hoffman of the architectural firm Mayer and Associates, 1319 Beacon Street, Brookline, MA 02466. Mr. Mann also noted that Harry R. Feldman, Inc., Professional Land Surveyors, prepared a proposed layout plan for the parking lot dated June 30, 2011 that was submitted as part of petitioner's application.

Mr. Mann described 1268 Boylston Street as an open-air parking lot for 87 vehicles that serves as employee parking for 1234, 1240, 1244 and 1262 Boylston Street. The property is located at the intersection of Boylston, Tully and Heath Streets. The parking lot has a landscaped border and a decorative iron fence on the Route 9 face of the lot. Epoch Senior Living is located across Heath Street from the lot and the surrounding uses are almost entirely commercial.

Mr. Mann said that his client, Durban Trust, is proposing to convert their existing unattended parking lot to attended parking. The conversion will create an additional 31 parking spaces with 7 required

handicap accessible spaces being provided within the portions of the existing parking lots behind and abutting 1234-1262 Boylston Street.. The required accessible spaces are located on the shortest accessible route of travel to an accessible building entrance and are therefore dispersed throughout such parking lots as the lots serve multiple buildings. He said that they are proposing to operate valet parking at the lot at 1268 Boylston Street with one attendant Monday through Friday from 8:00a.m. - 5:00p.m. There will be no valet service during evenings, on weekends or holidays. Mr. Mann said that he and his client are before the Board seeking relief in the form of a special permit under Section 6.04.3 of the Town of Brookline Zoning Bylaw.

Regarding the methodology employed by the proposed valet parking, Mr. Mann said that as a matter of policy, the valet parking lot at 1268 Boylston Street will be used to park vehicles of the employees of 1234, 1240, 1244 and 1262 Boylston Street during business hours, Monday through Friday except for holidays. The lot will be manned by an attendant from the hours of 8 AM to 5 PM. All the valet spaces are tandem. Employees arriving first in the morning will be able to pull into the forward spot and take their keys with them. Employees parking in the outer spaces will leave their keys with the valet and if they have not left by 5 PM will have their keys returned to them by the attendant. If there are not enough spaces at 5 PM each day to return all cars to an unblocked space, then the hours of valet operation will be expanded accordingly. There will be no night time or weekend valet service. When the lot is unmanned, it is expected to be empty as the using businesses do not have the need for more parking than is provided in the lots at 1234 – 1262 Boylston Street.

Mr. Muscaro said that the institution of a valet system and the commensurate gain in overall spaces will allow the owner to better serve his existing tenants. He said that at the present time there is a burden on the parking lots at 1234 – 1262 Boylston Street that often leads to people driving around searching for spaces. He said this happens mostly during non-summer months during the hours of 10

AM to 2 PM and is primarily caused by the overflow of employees unable to park in the lot at 1268 Boylston Street. The foregoing paragraph and this paragraph constitute petitioner's "Policy Statement" with respect to the parking.

Board Member Serafin asked whether a traffic study had been completed for the site. Courtney Synowiec, Planner, responded that in fact a traffic study was done in connection with a former proposal for a new building and parking garage with a 300 space capacity at 1268 Boylston Street and the Planning Board, at that time, was satisfied that it imposed minimal traffic impact.

Board Member Zuroff inquired as to whether the petitioner owned all the land at 1234, 1240, 1244 and 1262 Boylston Street and Mr. Mann responded that it does and that it is considered a single parcel. Mr. Zuroff asked about the availability of handicap accessible parking and Mr. Mann responded that there are 7 handicap accessible spaces spread amongst the lots each as close as possible to the entry of the buildings. Mr. Mann said that because it is considered a single parcel, the 7 spaces meet the requirement of the Zoning Bylaw for the 265 spaces that are on the lots, including the lot at 1268 Boylston Street.

Chairman Geller inquired about the requirement for a full time attendant under **Section 6.04.3**, noting that the lot is in operation not just during business hours. Mr. Geller commented that between the hours of 5 PM and 8 AM there would be no full time attendant but the owner would have the benefit of the additional 31 spaces. He said that it seemed inconsistent with the requirements of **Section 6.04.3**. Mr. Mann responded that the definition of "full time" is somewhat in the eye of the beholder as it relates to this type of operation. As a practical matter, most of the offices close-down at 5 PM and there is adequate parking close to the stores on Boylston Street within the other lots. Mr. Mann reminded the Board that the lot in question is only for employees of the businesses at 1234-1262 Boylston Street. Addressing Mr. Geller's concern that the tandem spaces could be used after 5 PM and the lack of an

attendant could cause confusion in the lot, Mr. Muscaro responded that the valet parking policy statement addresses this issue in that after 5PM the attendant will be allowed to leave only if there are enough spaces available that do not require tandem parking, failing which, he said, the attendant will be required to stay until such time as enough spaces are available.

Chairman Geller asked whether anyone in attendance wished to speak in favor of or against the proposal. No one rose to speak.

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

**Section 6.04.2.g – Accessible Parking**

Parking lots with 201-300 parking spaces require 7 handicap accessible parking spaces. The applicant is proposing to provide 7 accessible spaces. *Complies*

**Section 6.04.3 – Valet Parking**

Parking facilities shall be designed so that each vehicle may enter and exit from a parking space without requiring the moving of another vehicle. The Board of Appeals may modify this requirement where a parking lot is under supervision of a full-time attendant. *Special Permit Required.*

**Section 6.04.6.a – Illumination**

All illumination must be shielded so as not to shine upon abutting or other nearby properties. The applicant has submitted illumination details for the lamps they intend to install. *Complies*

**Modification of Zoning Board of Appeals Decisions #3399 and #3399A as needed.**

Ms. Synowiec reported that the Planning Board was supportive of this proposal. As this parking lot serves several buildings that experience parking shortages, providing additional attended employee parking at 1268 Boylston Street should ameliorate these issues. The applicant has presented clear documentation of how they intend to implement attended parking at this location, and it appears that it should not cause any nuisance to the neighborhood and will in fact be a benefit. The Planning Board noted, however, that there should always be an attendant present during operating hours Monday through Friday from 8:00 a.m. to 5:00 p.m., with exception to holidays. The Planning Board also noted that the landscaping on this site is somewhat sparse and would benefit from the addition of taller plantings to better screen vehicles. The Planning Board also found that the petitioner's parking lots,

including the proposed valet parking lot at 1268 Boylston Street, would comply with Section 6.04.2.g of the Zoning By-law as to handicap accessible parking, and that the submitted illumination details for the lamps intended to be installed by petitioner would comply with Section 6.04.6.a of the Zoning By-law. Therefore, the Planning Board approves the plans by Mayer & Associates, dated 7/14/11, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan indicating the parking layout, landscaping, the location of the new lampposts and fencing, if required, 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 illumination plan indicating that no light is cast onto neighboring properties subject to the review and approval of the Assistant Director of Regulatory Planning.
3. There shall be a parking attendant on the premises Monday through Friday from 8:00 a.m. to 5:00 p.m., with exception to holidays.
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.

The Chairman then called upon Michael Shepard, Building Commissioner, for the report from the Building Department. Mr. Shepard reported the petitioner has been cooperative in the past with issues related to the parking area. He recalled that several years previous when Boylston Street was undergoing extensive reconstruction, the petitioner agreed to close an entrance to the lot directly off Boylston Street. The result was a safer entrance and at that time they installed a new fence and considerable plantings. Mr. Shepard said that the Building Department was supportive of the relief requested as well as the conditions proposed by the Planning Board.

During deliberation, Mr. Zuroff recommend that the policy statement by the petitioner be made part of the decision, particularly the section requiring that the attendant be present if there are not an

adequate amount of single spaces available. Ms. Serafin agreed and added that she would like to see more plantings particularly along Boylston Street to help screen the lot from passersby. She said that she would be comfortable with a condition that required the petitioner to prepare a landscape plan showing additional plants to help screen the lot. She said that it would be appropriate for the Assistant Director of Regulatory Planning to review and if appropriate, approve the plan.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that it was desirable to grant special permit relief under **Section 6.04.3** for valet parking and confirmed that the other relief previously requested by the petitioner as stated in the public notice as to handicap accessible parking spaces (Section 6.04.2.g) and shielding of illumination (Section 6.04.6a) is not needed as the petitioner has demonstrated compliance with the requirements of the Zoning By-Law with respect to these sections. The Board also voted to amend the previous Decisions in case number #3399 and #3399A to the extent necessary to be consistent with the terms of this decision. 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 proper operation of the proposed use.

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

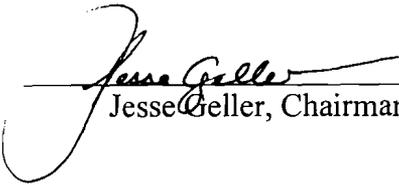
- 1. The Policy Statement related to tandem parking on page 4 of this Decision as stated by the attorney for the petitioner, shall become a condition of this Decision.**
- 2. Prior to the issuance of a building permit, the petitioner shall submit a final site plan indicating the parking layout, the location of the new lampposts and fencing, as proposed by petitioner, and a landscape plan depicting infill landscaping to help screen and**

beautify the parking lot from Boylston Street, subject to the review and approval of the Assistant Director of Regulatory Planning.

3. Prior to the issuance of a building permit, the petitioner shall submit a final illumination plan indicating that no light is cast onto neighboring properties subject to the review and approval of the Assistant Director of Regulatory Planning.
4. There shall be a parking attendant on the premises Monday through Friday from 8:00 a.m. to 5:00 p.m., with exception of holidays.
5. Prior to the issuance of a building permit, the petitioner 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.

RECEIVED  
TOWN OF BROOKLINE  
REGISTERED CLERK  
17 OCT 20 PM 10

Unanimous Decision of  
The Board of Appeals

  
Jesse Geller, Chairman

Filing Date: October 20, 2011

A True Copy

ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals