



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

Town of Brookline

Massachusetts

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BUILDING DEPT.

TOWN OF BROOKLINE

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2011-0062

Petitioner, Anwar Faisal, applied to the Building Commissioner for permission to revise an existing building permit to allow in excess of 24 feet to be devoted to the entrance of a garage currently under construction at 47 Hillside Road. The application was denied and an appeal was taken to this Board.

On November 17, 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 December 15, 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 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 November 24 and December 1, 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: FAISAL ANWAR
Owner: FAISAL ANWAR

Location of Premises: **47 Hillside Road**
Date of Hearing: **December 15, 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:

6.04.14; Design of All Off-Street Parking Requirements, variance required.
6.04.14.c; Design of All Off-Street Parking Requirements, special permit required

of the Zoning By-Law to revise an existing building permit in order to provide three garage doors facing the street **at 47 HILLSIDE ROAD.**

Said premise located in a **S-15 (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
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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, Jonathan Book and Christopher Hussey. The case was presented by Attorney Robert L. Allen Jr. of 300 Washington Street, Brookline MA. Mr. Allen was also accompanied by the owner, Mr. Faisal and his architect, Nalin Mistry

Mr. Allen described 47 Hillside Road as the site of a large three-story single-family dwelling and detached garage, located south of Route 9 near the intersection of Hillside, Warren and Lee Streets. Surrounding properties include other single-family homes, as well as the Brookline Reservoir. A stucco wall extends the length of the front lot line, and two curb cuts serve the property. The area in front of the

house is extensively paved with cobblestones. The property was subdivided earlier this year into three separate lots; however, the applicant continues to own all three lots. The property is relatively flat in front of the dwelling, while the topography on the rest of the lot drops down significantly as one moves away from the front lot line.

Mr. Allen said that his client, Anwar Faisal, is in the process of constructing a three-car garage to serve a single-family dwelling. The proposed garage would face the property's frontage on Hillside Road and align with one of the property's two curb cuts. The garage would be 26 feet deep by 36 feet wide and have a flat roof. The applicant is currently planning on using one of the bays for storage, but would like to use it for vehicle use. The applicant is planning on constructing an addition to the rear of the proposed garage and attaching everything to the existing dwelling. Only the garage requires relief.

Attorney Allen explained that the slope of the Petitioner's lot drops drastically from the front to the rear yard, making it impossible to create a side or rear yard facing garage, without adding to the existing drainage problem. Attorney Allen suggested that §6.04.14 (c) allows, by special permit, waiver of the requirements therein if "the Board of Appeals finds that the garage facing the side yard or rear yard on a lot is not feasible or would result in substantially less landscaped or usable open space on the lot". The intent behind the term "not feasible" is that there needs to be some kind of certainty that a garage could be successfully built facing the side yard. The situation is "not feasible" when there is no other alternative that does not contravene an existing by-law or zoning ordinance. Attorney Allen informed the Board that the Planning Board opined that a garage could be constructed by turning the current proposal counterclockwise to face the *front yard* (emphasis added) of the house, thus concluding there was an alternative and no relief should be granted. However, Attorney Allen argued that this reasoning is flawed and inconsistent with §6.04.14 (c) because the Planning Board's proposal: (i) does not face the side yard or the rear yard, but rather the front yard, and; (ii) would require additional zoning relief,

to wit, relief from the front yard setback. The intent behind this provision of the by-law was not to ban three car garages, but to make them not visible from the street. Due to the topography, there is no scenario where a garage could feasibly be constructed facing the rear or side yard.

Attorney Allen stated that the current proposal conforms to all the set-backs required under the code, including the front yard setback. The current proposal has a 38 foot setback and the required setback is 30 feet. The current proposal does not add any pavement, minimizes the impact on landscaping opportunities and green space, and does not harm the aesthetic quality of the property. Moreover, of the four houses currently on Hillside Road – a dead end street - no structure penetrates into the front yard setback. In fact, all of the homes on the road, like the Petitioner's, are built behind fairly grand stone walls making it less visible from the street and carrying out the intention of the by-law. By penetrating into the front yard setback, the garage becomes more visible from the street, and the entire streetscape would be askew. Thus, it can be argued that requesting relief from the front yard setback is more severe than the relief the Petitioner is currently seeking. In addition, §6.04.14 (b) allows, by special permit, waiver of the requirements therein if the lot has more than one frontage on a way and the building commissioner finds that locating the garage in the side yard is not practicable then a garage may be located facing the way that has the least visual impact or safety impact on the street. The Petitioner's lot has access to both Lee Street and Hillside Road. The topography not only makes the side yard facing garage unfeasible, but would also make access from Lee Street not practicable. Nevertheless, the provision does not address the practicality of access from either frontage, only safety and visibility. On one side is busy Lee Street, on the other a dead-end road behind a large stone wall. Clearly, the Petitioner meets this section of the code.

Attorney Allen argued that no undue nuisance, hazard, or congestion will be created by the creation of the garage as proposed. There will be no substantial harm to the established or future

character of the neighborhood or of the Town. The current proposal is not visible from the street, unless a vehicle is turning into the driveway. There are numerous three-plus car garages located within Zoning District S-15 and neighbors have provided support for the Petitioner's proposal.

Finally, Attorney Allen suggested that even if the provision of §6.04.14 were applicable and a variance was required, the Petitioner would satisfy the requirements for a variance under MGL c. 40A, as the topography which affects this lot, does not generally affect the S-15 zoning district. As previously was stated, the steepness of the lot makes it impossible to have a side-yard facing garage on the property. The desired relief may be granted without substantial detriment to the public good, as there is nothing significant being requested that will have any impact to the neighborhood. A literal enforcement of §6.04.14 would involve substantial hardship and would create severe drainage problems to the Petitioner's lot as well as the rear abutter. There have not been any objections raised by the neighborhood, so the desired relief may be granted without substantial detriment to the public good and, as stated above, without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

Chairman Starr asked whether anyone in attendance wished to speak in favor-of or against the requested time extension. No one rose to speak.

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

FINDINGS:

Section 6.04.14– Design of All Off-Street Parking Requirements: No more than 24 feet of the façade of a building facing a way may be devoted to the entrance of a garage. This section allows for three exceptions: (a) if the garage is located behind the plane of the rear wall of the principal building; (b) if the lot has more than one frontage on a way and locating the garage in the side yard is not practicable; and (c) by special permit if the Board of Appeals finds that a garage facing the side yard on a lot is not feasible or would result in substantially less landscaped or usable open space on the lot. The proposed garage could feasibly be designed to face sideways and not the front yard. *Variance required.*

Ms. Synowiec reported that the Planning Board was not supportive of a variance for a three-car garage facing the street on this property. There are clearly other options the applicant could consider to turn the garage to face sideways, and doing so would present a better front façade for Hillside Road. The Board did understand that there is extensive paving already in front of the building, and the road is a dead-end way that is infrequently travelled. Unfortunately, these conditions do not rise to the variance threshold, and in their opinion this proposal requires a variance rather than a special permit. Therefore, the Planning Board did not recommend approval of the proposal and plans by Nalin Mistry. However, should the Board of Appeals find the proposal meets the requirements for a variance or some other form of relief and grants approval of the plans, the Planning Board recommended the following conditions be attached to a favorable decision:

1. Prior to the issuance of a building permit, final plans and elevations including more architectural detailing of the garage and indicating all salient dimensions and materials shall be submitted 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 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; 2) final building elevations stamped and signed by a registered architect; and 3) 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 stated that since Mr. Faisal purchased the property several years ago he has done significant work restoring the inside of the home to its original state. He said that the craftsmanship is first class and he expects that not only the garage addition but the enclosed pool addition to the rear will be of the same high quality. Mr. Shepard stated that an option that had the garage doors face the side of the property would needlessly decrease the available landscaped open space. He noted that almost the entire front yard is used for driveway and rotating the garage would

simply increase the amount of pavement/cobbles. Mr. Shepard said that in his opinion, the Board could consider the grant of a special permit in accordance with the provisions of Section 6.04.14c, “The Board of Appeals by special permit may waive the requirements in Section 6.04.14, but only to the extent necessary, if it finds that a garage, carport, or covered parking area, accessed by or facing a side or rear yard on a lot is not feasible or would result in substantially less landscaped or usable open space on the lot.” Mr. Shepard noted that all cases are different but in this case, given the width of the private road and the fact that it is a dead end road and infrequently traveled, there would be no harm to the sensibilities of the public should the three garage door version be approved. Mr. Shepard stated that the Building Department is supportive of the relief as requested.

Chairman Starr began the deliberation by suggesting that the term “feasible” has to be interpreted with certain reasonableness. Here, considering the topography of the lot, it does not seem reasonable, either financially or otherwise, to build a three car garage in any location other than facing the Street. To do so would increase the amount of paving and decrease the amount of landscaping on the property, and create serious drainage issues. Chairman Starr felt that the variance standard had been met due to the topography of the lot, however she concluded that a variance was not necessary to consider as a special permit under Sections §6.04.14 seemed appropriate. She felt that the location of the three bay garage was appropriate, not offensive to the public, and would mainly be hidden behind a very large stone wall. Board Member Book agreed with the Chairperson that a variance argument had been made, but a Special Permit was more appropriate. Chairperson Hussey, did not feel that a variance was appropriate and had some concerns as the construction of the garage was underway, and also thought that the design needed some more work, but ultimately agreed with the reasoning of Chairman Starr.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that all the requested relief could be granted by special permit. The Board found that that the petitioner has satisfied the requirements necessary for relief under Sections §6.04.14 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:

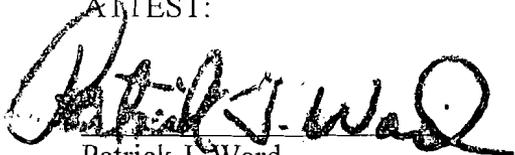
- 1. **Prior to the issuance of a building permit, final plans and elevations including more architectural detailing of the garage and indicating all salient dimensions and materials shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2. **Prior to the issuance of a building permit, the applicant shall submit 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; 2) final building elevations stamped and signed by a registered 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

Filing Date: February 14, 2012

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals


Enid Starr, Chairman