



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

Town of Brookline

Massachusetts

Town Hall, 1st 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. 2010-0020**

Petitioner, The Hamilton Company, applied to the Building Commissioner for permission to provide underground parking for residents of Brookline not residing in Dexter Park at 175 Freeman Street. The application was denied and an appeal was taken to this Board.

On April 29, 2010 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 12, 2010 at 7:15 p.m. in the Selectmen's Hearing Room, 6th floor, Town Hall, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to the 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 29, and August 5, 2010 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

**LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEAL
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: THE HAMILTON COMPANY
Owner: Hamilton Park Towers LLC
Location of Premises: 175 Freeman Street
Date of Hearing: August 12, 2010
Time of Hearing: 7:15 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

4.07; Table of Use Regulations, Use #22, special permit required.

Modification to Board of Appeals Decisions # 1536, 1617, 1739, 1741, 1850, 1943, 1972, 2009, 2102, 3461 and 3461A as necessary

Of the Zoning By-Law to provide underground parking for residents not living in Dexter Park.

Said premise located in a M-2.0 (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, Christopher Hussey and Jonathan Book. Fred Lebow, of FSL Associates, 358 Chestnut Hill Avenue, Brighton, MA 02135-3416 presented the case on behalf of the petitioner, The Hamilton Company. The owner of the company, Harold Brown, was present during the course of the hearing.

Mr. Lebow presented plans of the proposed parking plan at Dexter Park. He described the Dexter Park Apartments, 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 the petitioner is proposing to rent 35 parking spaces in its underground garage to residents who live outside of Dexter Park, but reside within a 1,000 ft. buffer zone around the property. He said that the affected spaces are #165-#192 on the parking plan. Mr. Lebow said that the petitioner has already made many improvements to the property since it was purchased last fall. He described the owner of the property as a major entity in real estate in Brookline as well as surrounding communities.

At this point the Chairman inquired whether the requested number of spaces was 28 as shown on the Planning Board report or 35 as stated by Mr. Lebow. Mr. Lebow stated that they indeed requested 35 spaces. The Building Commissioner reported that only 28 spaces are available to rent and that he testified at the planning Board hearing to that end. He said that there have been numerous Board of Appeals and court cases relative to this address. He said that when all is said and done the owner has to provide .9 spaces per unit. With 409 units, 368 spaces must be provided. Since there are 396 available spaces on the property this leaves a delta of 28 spaces. Mr. Shepard

reported further that while there may be more spaces available, 368 must be available to the use they serve, **Section 6.01.4** of the Zoning By-Law.

Mr. Lebow said that the Hamilton Company had received many requests for parking. The company decided that it may be able to accommodate area residents and submitted an application for relief to the Board. He said that the Company sent approximately 600 letters to nearby residents and held a public meeting for residents that had some concern about the proposal. Mr. Lebow, referring to the plans before the Board, spoke of the loading dock on the Pleasant St. side of the property. Referring to photographs, Mr. Lebow said one showed the side door off Thatcher Street to the underground parking. Another showed the newly installed speed bumps and another depicted the guest parking location. Mr. Lebow described the fourth as an interior door related to the parking. The Chairman accepted the photographs as exhibits #1 a, b, c and d. Mr. Lebow said that the Planning Board requested the installation of a man-door near the overhead door at the entry/exit from the underground parking. He said that the Planning Board requested that the door be installed when 20 spaces have been rented to area residents. Mr. Lebow opined that the ownership would make appropriate accommodations regarding the door for the safety and convenience of its patrons. Asked how pedestrians leave the underground parking, Mr. Lebow said some people activate the overhead door and have approximately ten seconds before the door closes behind them. He said patrons are encouraged to leave the underground parking through the main body of the building and out to grade on the first floor. Referring to neighbor complaints relative to traffic, Mr. Lebow reminded the Board that they have 396 spaces available and if they provided a space to each unit, they would have just as much traffic as they would under the proposal before the Board. Board Member Hussey asked how they determined the thousand foot radius around the building and Mr. Lebow responded that they paid for a GIS summary. Mr. Hussey stated that the drawing provided

seemed out of scale. Referring to the new man-door requested by the Planning Board. Mr. Hussey asked whether they intended to install it. Mr. Lebow responded that if circumstances require the installation of a man-door then the management will install the door. Mr. Lebow opined that the cost of installation would be in the \$60,000 range.

Mr. Lebow then introduced Mr. Carl Valeri, President of The Hamilton Company. Mr. Valeri said he resides in Arlington MA. Mr. Valeri said that residents of the building have key cards that will open all secured doors to get to their unit. He said that the same key card will allow access to the elevator. Mr. Valeri said that they take the concerns of the neighborhood very seriously and they met with the neighbors on two separate occasions to explain the proposal and listen to concerns. He said they understand some of the concerns the neighbors had with previous ownership and he intended not to repeat their mistakes. He said that they had spent a considerable sum to upgrade the security system including cameras and are providing additional security on historically busy nights. He said they addressed traffic concerns on Thatcher Street by installing speed bumps and a stop sign to slow people down exiting the facility. He said that management also changed the trash collection cycle to address noise concerns. He said they realigned the traffic entrance off Freeman Street to facilitate movement for vendors and residents and visitors. He said that they anticipated this change would alleviate some of the traffic on the Thatcher Street side of the property.

Mr. Lebow said two public meetings were held with the neighborhood. He said the first was May 17, 2010 and he said about 35 people attended at the Dexter Park property. He said many topics were discussed other than parking including new landscaping. He said the speed bump was improved as a result of the meeting. He said the second meeting was held on April 28, 2010 at the Hamilton Company. Mr. Lebow said 6 or 8 interested parties attended and discussed many issues

and the realigned Freeman Street entrance was one result. The Dexter Park parking policy was submitted as exhibit #2.

Chairman Starr asked whether there was anyone in attendance that wished to speak in support of the application. Hearing none, she asked whether anyone wished to speak in opposition to the proposal before the Board.

Eunice White, of 135 Pleasant Street, submitted a letter to the Board. Ms. White said she was a direct abutter to the property. She said the previous owner tried to rent to off-site residents and subsequently withdrew its proposal. She said this proposal will result in large numbers of non-local people entering and exiting the neighborhood. She said that the Dexter Park property has in the past required increased police to address noise/party issues. She said that increased people in the neighborhood made no sense at this time. She was concerned about building security with non-residents accessing the elevator to get out of the underground parking. Also she said she was concerned about the safety of the overhead door exit from the garage. She said the Board should consider a process that would require an annual review of the parking situation.

Carol Caro ,of 27 Elba Street, speaking to traffic on Thatcher Street said that in her opinion a traffic study must be conducted before any more traffic is introduced to the area.

Linda Pelke, of 48 Harris Street, said that it seemed that no spaces would be available to visitors under the current plan. She also said that traffic is the major issue. She said that the Dexter Park area is one of the most congested in Brookline and the introduction of more spaces will exacerbate this condition. She also expressed her concern relative to the overhead door exit in the underground garage. Ms. Pelke stated that in her opinion it is premature to allow any additional parking since the petitioner has not adequately answered the increased traffic issues. She said that she would like the Board to deny the requested relief because it would be more detrimental to the neighborhood.

Attorney Daniel Saltzman, of 62 White Place, said he was asked to represent some Brookline residents that were most impacted by the proposal. Attorney Saltzman opined that approval of the requested relief will exacerbate traffic/safety issues. He said that Dexter Park is responsible for the formation of at least four neighborhood associations. Attorney Saltzman said at least three sections of the zoning By-law will be violated with the approval of the requested relief. He said the location was not appropriate for such a use. He said that renting spaces was a commercial venture in a residential neighborhood. Citing Section 9.05 of the Zoning By-law, Attorney Saltzman said that a special permit in his opinion could not be granted because it would violate subsections a through d. He said granting of the requested relief would violate Section 6.01.4 of the Zoning By-Law. He said that Section 6.02 is also violated since, under current zoning over 800 spaces are required. Attorney Saltzman outlined several proposed conditions should the Board be inclined to grant relief. These included a traffic study, he had concerns about the radius, that defined streets should be provided, management of the lot, renovations to the Freeman Street entrance, a gate at the entrance/exit of the surface lot and lastly, a quarterly report stating names and addresses of the non-residents parking under the proposed program.

Thomas Vitolo, of 20 Chapel Street, said he thought the proposal was a “bad idea”. He said he would rather see the petitioner apply to the Board of Selectman on an annual basis similar to the way open air parking permits are issued. He said this process would keep the owner honest. Mr. Vitolo opined that special permits become difficult to enforce with change of ownership.

Margaret Senturia, of 98 Crowinshield Road, said she agreed with most everything her neighbors have said. She said she was concerned about due process and she wished the proposal could be reviewed annually.

The Chairman asked whether the petitioner wished to respond to any of the concerns voiced by the public.

Mr. Lebow said the current owner had nothing to do with the history of the building. He said the current owner rarely sells his holdings. They have increased security and since they purchased the property they have had no complaints. He said they have a sticker program and violators are regularly towed. He said the ownership will always provide parking for residents. Regarding the gate, Mr. Lebow said the requested gate will not cure any condition related to the underground parking. He said parking will be limited to Brookline residents on streets within the radius.

Hearing no other comments from the public, the Chairman called upon Ms. Courtney Synoweic to deliver 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. Synoweic stated that the Planning Board was supportive of this proposal with a condition to reevaluate the rental parking plan in three years and to limit off-site parkers to twenty-eight parking spaces, which is the number of spaces in excess of what was required for this property. Offering twenty-eight extra spaces to neighboring residents should be a benefit to the community. The applicant has stated that residents of 175 Freeman Street are guaranteed parking over non-residents, that the rentals will not be made on a temporary basis (such as on weekdays only), and rentals will only be made to residents who live within 1000 feet of the property and whose cars are registered in Brookline. As some neighbors expressed concern related to security and traffic safety, the Planning Board believes the applicant should take measures to slow exiting vehicles and provide increased security measure regarding who enters and exits the garage. To ensure the effectiveness of these measures, the Planning Board believed the applicant should return to the Board of Appeals after

three years for review of the operations of the parking and rental plan. Therefore, the Planning Board recommended approval of the special permit to rent 28 parking spaces in the underground garage to off-site Brookline residents residing within 1,000 ft. of the property, subject to the following conditions:

1. Prior to issuance of a building permit, 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. 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. This relief shall expire in three years from the date of this decision, unless extended by the Board of Appeals after a finding that the parking and rental plan is working effectively, and minimizes impacts to the neighborhood.
4. Prior to issuance of a building permit, 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.

The Chairman then called upon the Building Commissioner to deliver the comments of the Building Department. Mr. Shepard said that since no building permit shall issue in this case, perhaps the language could be modified to reflect something like “prior to the rental of any spaces...”

The Chairman asked about the number of available spaces on the site. Mr. Shepard confirmed that only 28 spaces were available. Regarding spaces for visitors and tradespeople, it has only been relatively recently that the by-law required specific numbers. He said that in 1974 he had to assume that the required spaces per unit included transient parking uses as well. Regarding the comment that zoning requires that the owner provide in excess of 800 spaces for the use, he said that the

zoning at the time of initial relief or Court decision is the operative requirement unless of course the petitioners want to increase the number of units in the building. Speaking to Mr. Vitolo's comment, Mr. Shepard said that indeed a special permit if granted by the Board would run with the land, not the owner. He said the Board could of course require the petitioner to return to the Board at some predetermined period such as three years. Mr. Shepard said that complaints related to Dexter Park since the new ownership have been almost non-existent, a far cry from the work required by the Building Department under previous owners. Mr. Shepard agreed with the petitioner that a surface lot gate would do little to control underground parking but he said it could help ameliorate traffic issues from the surface lot for the neighborhood. Mr. Shepard suggested shelving the gate idea until some time when the petitioner returns to the Board for review of the operation. The Chairman asked how the number of parking spaces increased from the required 368. Mr. Shepard assumed some of the spaces came from increased parking related to the loading dock that was installed off Pleasant Street. The Chairman, for the benefit of the audience, said that a land court decision is binding upon the Board. That there are 368 spaces plus 20 that were added in 1999 by a previous Board of Appeals decision. Mr. Shepard insisted that only 28 spaces are available for rental to non-residents of the building.

Board member Book asked about the Building Code requirements relative to an additional man-door in the underground garage. Mr. Shepard responded that the requirements of the building code at the time the building was constructed are operative. He said that since no additional spaces are being provided then there is no increased code requirement. Mr. Shepard agreed that using an overhead door to exit for pedestrians is inherently dangerous and he would support a condition requiring that all people using the garage exit through the lobby. Mr. Book then inquired whether the petitioners really had 28 spaces or some lower number. Mr. Shepard responded that he knows

they have 28 more spaces than required by the initial decision. He said he had no idea how additional spaces were created that it could just have been the result of some contractor painting lines.

The Chairman opined that getting cars off the street would indeed benefit the neighborhood. She stated that the petitioner is not looking for any additional parking; in fact, its proposal will utilize underutilized interior parking. She said that she was inclined to grant the requested relief subject to modified conditions. She said that she was comfortable for the grant of 28 spaces since there was some logical legal basis for that number. Mr. Hussey said he was concerned about a lack of designated visitor spaces. Mr. Lebow provided a photograph showing visitor spaces that are indeed provided.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant a special permit in accordance with Sections 4.07, Use #22, of the Zoning By-law and made the following findings pursuant to 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.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

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

- 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.
3. Renters of the available spaces shall live within a 1000 foot radius of 175 Freeman Street.
4. This relief shall expire initially in one year from the date of this decision, 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



Enid Starr, Chairman

Filing Date: September 21, 2010

True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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