



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

Town of Brookline
Massachusetts

Town Hall, 1st 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. 2010-0022

Petitioner, Manuela Mariani, applied to the Building Commissioner for permission to enlarge the driveway in the front yard of her client's home at 48 Payson Road. The application was denied and an appeal was taken to this Board.

On April 26, 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 June 24, 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 June 3 and 10, 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: **Manuela Mariani**

Owner: **Jonathan Weintroub**

Location of Premises: **48 PAYSON RD**

Date of Hearing: **June 24, 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

1. **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
2. **6.04.5.c.1; Design of All Off-Street Parking Facilities, variance required.**
3. **6.04.12; Design of All Off-Street Parking Facilities, special permit required.**

Of the Zoning By-Law to widen the existing driveway requiring Board of Appeals relief per plans at **48 PAYSON RD BRKL.**

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, Jesse Geller and Board Members, Christopher Hussey and Jonathan Book. The petitioner, Manuela Mariani of InTAdesign.it, Boston, MA, spoke on behalf of the owner, Jonathan Weintroub, who was also in attendance.

Ms. Mariani described the home at 48 Payson Road as a two-story single-family structure located on a steeply sloping lot. The home is built into the slope and there is a single-car garage

below grade underneath the first story. There is a narrow driveway leading to the garage, which is supported on either side by retaining walls and is currently used to park cars in the front yard setback. There is a set of stairs off the driveway that lead to a small patio and secondary front entrance to the home. The surrounding properties are similarly sized single family houses with similar parking configurations.

Ms. Mariani said that her clients, Jonathan Weintraub and Robbie Singal, are proposing to widen their existing driveway to avoid a tandem parking arrangement. The driveway will be 18' wide with an 18' wide curb cut. The owners are proposing to move the north facing retaining wall to accommodate the widened driveway, and construct an enlarged porch that extends from the existing front porch to the existing patio (at the secondary front entrance). As the driveway and garage are below grade, the patio will extend over the driveway. She said that her clients are also proposing a new stair next to the north facing retaining wall for additional access to the enlarged patio. The porch will be constructed from wood and the driveway will be repaved with permeable pavers.

Ms. Mariani said that her clients are seeking relief under Sections 6.04.12, 5.43 and 8.02.2 of the Town of Brookline Zoning By-Law. She said that they are proposing to install planters, landscaping and permeable pavers as counterbalancing amenities, required under Section 5.43 of the Zoning By-Law.

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

Jonathan Weintraub, the owner, rose to speak in favor of the proposal. Mr. Weintraub said that the denigrated condition of the existing driveway retaining wall, at least partially motivated them to undertake this project. He said that the reconstruction of the retaining wall will offer a more pleasing view of the property from the street and he opined that it made sense to widen the driveway at the same time. Mr. Weintraub said he has made a point of communicating with his

neighbors but conceded that construction is often a dusty, noisy business. He said that it was his intent to only consider high quality contractors in an effort to mitigate the neighbor's concerns. Regarding potential damage to plantings as raised by the owner's neighbor, he said that they also loved the existing plantings and will do everything they can to avoid damage.

Board Member Hussey, referring to the pine tree mentioned in the letter from the owners of 52 Payson Road, inquired on whose property it was located. Mr. Weintraub responded that until he had a survey done there was some question of ownership. He said when siting along the lot line stakes installed by his surveyor, it appears that the tree is located on his property. Board Member Hussey stated that the installation of the stairs alongside the driveway could impact the root system of the pine tree. Ms. Mariani said that the stairs are actually constructed of wood and this should minimize potential damage to the root system.

The Chairman asked whether anyone wished to speak in opposition to the petition. No one rose to speak.

The Chairman marked as Exhibit "A", a letter from the owners of 52 Payson Road regarding their concern over the preservation of a tree on the lot line, and noise dust and debris from construction affecting them.

Board Member Book asked whether the only relief required pertained to an additional vehicle parking in the front setback and Mr. Shepard affirmed that this was the case.

In an effort to address the concerns of the abutter, the Chairman asked what provisions are being contemplated to deal with the noise, dust and debris as well as potential soil erosion while the retaining wall is being relocated. Ms. Mariani responded by saying that best construction practices will be employed during construction and that her clients were seeking bids from only the most respected contractors to help minimize the impacts on the neighbor at 52 Payson Road.

Courtney Synowiec, Planner, delivered the findings of the Planning Staff on behalf of the Planning Board.

Section 6.04 – Design of Off-Street Parking Facilities

.5.c.1 – front yard setback

NEW PARKING AREA	Required	Proposed	Finding
Front Yard Setback (parking)	20'	10'11"	Special Permit*†

* Under **Section 6.04.12**, the Board of Appeals may waive dimensional requirements for new parking facilities to serve an existing structure.

† Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if counterbalancing amenities are provided. The applicant is proposing to install planters, landscaping and permeable pavers.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter or extend a non-conforming condition.

Ms. Synowiec said that the Planning Board was supportive of this proposal. While parking within the front yard setback is generally not preferable, the site is not conducive to many other options (to avoid a tandem arrangement) given the configuration of the building and the topography of the lot. The proposed configuration is fairly sensitive to its context and should not represent a substantial departure from the existing configuration. The new driveway should also be an improvement in terms of materials. The Planning Board is also supportive of the porch extension as it will create a usable recreation space in the front yard for the applicants to use, while providing screened storage for refuse bins and bicycles. Therefore, the Planning Board recommends approval of the plans, titled “Weintroub Signal Property, 48 Payson Road,” by Manuela Mariana, dated 4/9/10 and revised 5/19/10 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans indicating all setback dimensions, the location of retaining walls and parking spaces 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 landscaping plan indicating all counterbalancing amenities.
3. Prior to the issuance of a building permit for the driveway, the applicant shall obtain a building permit for the addition and have begun work.
4. 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; and 2) evidence that 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 reiterated for the benefit of the Board that there are two Building permits for the project. The driveway expansion that is currently before the Board and an as of right addition to the same side of the existing home. Mr. Shepard said that given the neighbor's concern regarding construction techniques and potential impact on the neighbor, that his department will require a construction management plan to help mitigate those impacts. He said that these plans customarily provide contact information of the contractors, hours of operation, time of deliveries and dust control should it become an issue. Mr. Shepard said that the Building Department is supportive of the proposal as well as the conditions recommended by the Planning Board.

The Board, having heard all the testimony, deliberated on the merits of the application. Board Member Book stated that he was in favor of granting the requested relief subject to some modification of the Planning Board's recommended conditions. He said that he would like to include materials as one of the items subject to review by the Assistant Director for Regulatory Planning in condition #1.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the requirements of Sections 5.43, 6.04.12 and 8.02.2 of the Zoning By-Law have

been satisfied and that it is desirable to grant the relief requested 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:

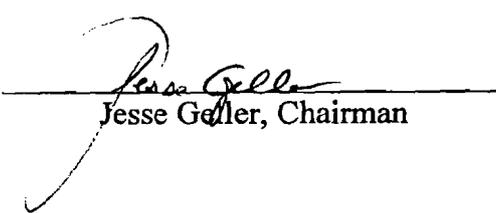
- 1. Prior to the issuance of a building permit, the applicant shall submit final plans indicating all setback dimensions, the location of retaining walls and parking spaces, including all materials, subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities.**
- 3. Prior to the issuance of a building permit for the driveway, the applicant shall obtain a building permit for the addition and have begun work.**
- 4. 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Filing Date: July 13, 2010

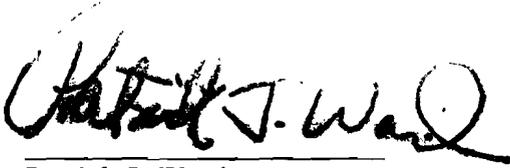
A True Copy

ATTEST

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK



Jesse Geller, Chairman

A handwritten signature in black ink, appearing to read "Patrick J. Ward". The signature is written in a cursive style with a large, prominent "P" and "W".

Patrick J. Ward
Clerk, Board of Appeals