



# *Town of Brookline*

## *Massachusetts*

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

Town Hall, 1<sup>st</sup> 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. 2010-0050

Petitioners, William and Helene Burrows, applied to the Building Commissioner for permission to increase the parking on their lot from 9 to 15 vehicles for the storage of cars of residents of lots within 1400 feet of 43 Winchester Street. The application was denied and an appeal was taken to this Board.

On 19, May 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 4, November 2010, at 7:00p.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 his 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 14 and 21, October 2010, 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: BURROWS, WILLIAM C & HELENE C**

**Owner: BURROWS, WILLIAM C & HELENE C**

**Location of Premises: 43 WINCHESTER ST**

**Date of Hearing: November 04, 2010**

**Time of Hearing: 7:00 PM**

**Place of Hearing: Selectmen's Hearing Room, 6th. floor**

A public hearing will be held for a variance and/or special permit from:

- 1. 4.07; Table of Use Regulations, Use #22, special permit required.**
- 2. 8.02.2; Alteration or Extension, special permit required.**

**Of the Zoning By-Law to ADDITIONAL ON SITE PARKING REQUIRING BOA RELIEF at 43 WINCHESTER ST BRKL.**

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, Jesse Geller and Board Members, Jonathan Book and Mark Zuroff. The Petitioner, William Burrows, presented his case before the Board.

Mr. Burrows explained that a previous owner, George MacFarlane, obtained a license for open-air parking for six vehicles at 43 Winchester Street from the Board of Selectmen in 1946. He said the license was continually in effect until 1961. That year the Board of Appeals granted a special permit for the parking and licensing of nine cars. He said that this license has been applied-for and maintained on a yearly basis since 1961.

Mr. Burrows described his property at 43 Winchester Street as a single-family home that was constructed in 1887. The home is positioned near the side lot line shared by 47 Winchester Street and is fairly close to the street, thus allowing for a generous side and rear yard. He said that he has a 28' wide driveway and curb cut, and the majority of the yard is paved-over for vehicular use, and has been for a substantial period of time. There is an existing two-car garage at the rear of the property. Mr. Burrows said that he has provided parking since he took possession of the home in 1979, and has always maintained a license for nine cars.

Mr. Burrows, said that he is proposing to legalize the parking for the additional six cars that are being parked on site so that he may obtain an open-air parking license for 15 cars. He maintains a 6' fence around the entire parking area, per condition #2 of the 1961 Decision. He said that he is not proposing any alterations to the site.

Board Member Book inquired about the duration of open air parking permits. The Building Commissioner responded that these permits are issued annually by the Board of Selectmen. Mr. Book then asked the petitioner how long he had 15 cars parked on his property as opposed to the 9 car license issued by the Board of Selectmen. Mr. Burrows responded that he was not sure of the time frame.

The Chairman asked whether anyone wished to speak in favor or in opposition to the proposal. No one rose to speak

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

**Section 4.07 – 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.

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter a nonconforming condition.

Ms. Synoweic said that the Planning Board was generally supportive of the proposal to legalize the six additional parking spaces at 43 Winchester Street. The parking rental accessory use has been operational since 1946, and both the previous and current homeowners have exercised diligence with respect to applying for open air parking licenses. Finally, the Planning Board believed that the applicant is providing a service and an amenity to the neighborhood. Therefore, the Planning Board recommended approval of the special permit to rent 15 parking spaces to off-site residents residing within 1,400 feet of the subject property and the plan by William Burrows, submitted 10/13/10, subject to the following conditions:

1. Prior to issuance of a building permit, the applicant shall submit a final parking and site layout plan indicating new landscaped areas, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. 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 Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard responded that the Board of Selectmen, prior to the issuance of open air parking licenses, ask both the Police and Building Departments to check whether the sites are appropriate for the requested licenses. Mr. Shepard said he visited the 43 Winchester Street site shortly before the scheduled Selectmen's hearing regarding this

site. He said the spaces were clean, well lit, without being a nuisance to the neighborhood and delineated for 15, not the requested 9 spaces. The Board of Selectmen issued the license with the understanding that the petitioner would seek relief from the Board of Appeals for the additional spaces. Mr. Shepard opined that since the subject address is located in an M-2.0 zoning district, the property could easily be converted to multi-family housing similar to many of the buildings in the immediate vicinity. He said that if the granting of the additional spaces would keep the property as a single family, at least in the near term, in his opinion it would be worth it.

During deliberations, Board Members were unanimous in their unhappiness, disappointment and frustration that the petitioner for a significant period of time intentionally maintained a parking lot with more spaces than the number he applied for to the Board of Selectmen or which were allowed under the Zoning By-Law. They all were troubled that granting the relief as requested has the appearance of rewarding the petitioner's prior actions. The Board Members were also mindful, however, that more intense uses are permitted under the Zoning By-Law than those operated by the petitioner.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permit relief as requested and that the petitioner has satisfied the requirements necessary for relief under **Sections 4.07, 8.02.2, and 9.05** of the Zoning By-Law and made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

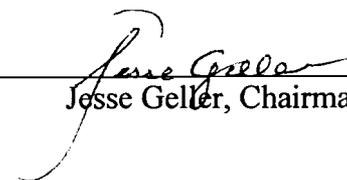
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.

d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

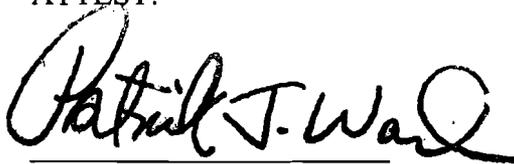
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to issuance of a building permit, the applicant shall submit a final parking and site layout plan subject to the review and approval of the Assistant Director of Regulatory Planning.
2. 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.

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK  
DEC 03 10 48  
Unanimous Decision of  
Board of Appeals  
Filing Date: December 3, 2010

  
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Jesse Geller, Chairman

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals