



# *Town of Brookline*

## *Massachusetts*

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

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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. 2010-0052

Petitioner, Justin O'Shea, applied to the Building Commissioner for permission to construct a new parking area his the front yard at 71 Eliot 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 28, October 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 7 and 14, 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: O'SHEA, JUUSTIN M & LAURA P  
Owner: O'SHEA, JUUSTIN M & LAURA P  
Location of Premises: 71 ELIOT ST  
Date of Hearing: **October 28, 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. **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
2. **5.91; Minimum Usable Open Space, variance required.**
3. **6.04.5.c.1 & 2; Design of All Off-Street Parking Facilities, variance required.**
5. **6.04.12; For the Design of All Off-Street Parking Facilities, special permit required.**
6. **8.02.2; Alteration or Extension, special permit required.**

Of the Zoning By-Law to NEW PARKING AREA REQUIRING BOA RELIEF at 71 ELIOT ST

Said premise located in a **T-5 (two-family and attached single family)** 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.*

**Enid Starr  
Jesse Geller  
Robert De Vries**

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, Christina Wolfe and Mark Zuroff. The Petitioner, Justin O'Shea, presented his case before the Board.

Mr. O'Shea said that in 1969 the Board of Appeals granted relief to construct a parking area similar to the one before the Board but the space was never constructed. He said that his home at 71 Eliot Street is a two-story single-family dwelling near the intersection of Eliot Street and Loveland Road. It has a hip-roof and is on a small lot whose elevation is somewhat above Eliot Street. A set of stairs provides access from the sidewalk to the front entrance. His neighbor's homes are either single-family or two-family types with a similar street orientation, however most of these dwellings already have parking, either in the front yard or garage.

Mr. O'Shea, said that he proposes to install a single-car parking space to the right of his home at 71 Eliot Street. Currently, he has no parking. The proposed parking space would be approximately 10 feet wide by 21 feet deep and require the construction of a retaining wall along the property line. Mr. O'Shea said he would construct a wood retaining wall that will gradually increase in height as it gets further from the street to a maximum of four feet high. The driveway would be finished with concrete pavers, and two new sets of stairs would be constructed: one set leading from the new parking area to the rear yard, and another leading from the parking area to a new landing and set of front stairs. The existing front steps leading from the sidewalk to the front landing would be removed, he said.

Chairman Geller asked whether it will be necessary to exit the driveway in reverse and whether this would present a dangerous condition. Mr. O'Shea said that while Eliot Street was fairly busy with residential homes and a neighborhood school, he would have to back out and be cautious similar to his neighbors' parking arrangements. He said that the retaining walls are lowest at the sidewalk and would afford a clear view of traffic and pedestrians.

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

Polly Selkoe, Assistant Director for Regulatory Planning delivered the findings of the Planning Board.

**Section 5.43 – Exceptions to Yard and Setback Regulations**

**Section 5.91 – Minimum Usable Open Space:** The applicant was cited for this section in case the proposed parking area entailed removing a portion of the lot’s usable open space. The applicant has submitted elevation and setback information indicating the proposed parking area does not likely comply with usable open space standards now, being narrower than 15 feet and with a grade greater than 8 percent. Therefore, using that area for parking would not remove usable open space, and *relief under this section is likely not required.*

**Section 6.04.5.c.1 & 2 – Design of All Off-Street Parking Facilities (front and side yard setback)**

**Section 6.04.12 – Design of All Off-Street Parking Facilities:** Where new parking facilities are being installed to serve existing structures and land uses, the Board of Appeals may by special permit allow the substitution of other dimensional requirements for those in Article 6 permitted it is necessary to install some or all of the off-street parking spaces that would be required for a similar new building. *Special permit required.*

**Section 8.02.2 – Alteration or Extension:** A special permit is required to alter this non-conforming lot. *Special permit required.*

	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Parking Side Setback</b>	5 feet	n/a	0 feet	Special Permit*
<b>Parking Front Setback</b>	15 feet	n/a	0 feet	Special Permit*

\*Under Section 6.04.12, the Board of Appeals may by special permit allow for the substitution of dimensional requirements for new parking areas to serve existing structures.

Ms. Selkoe said that the Planning Board was not opposed to this proposal to install a parking space at 71 Eliot Street. The proposal is modest and has been tastefully designed in conjunction with other landscape improvements to the dwelling’s front yard. This area is not currently well served by mass transit, and the Board understands the applicant’s need for an on-site parking space. The applicant currently parks at Heath School, but that parking arrangement is changing as those spaces will now be distributed by lottery and require a fee. The proposed parking space location is the most appropriate area on what is a very small site for a parking space. The

proposed pavers and new stairs are attractively designed and should lessen the overall visual impact on the street. Most of the other dwellings along this street have parking areas or garages in the front yard, and this proposal would not detract from the existing streetscape. Therefore, the Planning Board recommended approval of the proposal and plans, including the proposed site work plan and the proposed site plan and section, prepared by Robert Fizek and dated 7/21/2010, subject to the following conditions:

- 1) Prior to issuance of a building permit, a final site plan, indicating all setbacks, dimensions and materials for the parking area and all front yard improvements, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
- 2) Prior to issuance of a building permit, final plans for the retaining wall shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
- 3) No vehicle shall be parked so that it overhangs or obstructs the sidewalk.
- 4) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 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. He reiterated the petitioner's statement that many of his neighbors have similar parking arrangements. Mr. Shepard stated that the proposal before the Board appeared well prepared and he assured the Board that if they should grant the requested relief, his Department would insure that the plan is executed as presented. Mr. Shepard said that the Building Department was supportive of the project and suggested that the Board consider adding a condition requiring the petitioner to obtain a curb-cut permit from the Engineering Department before a building permit issues.

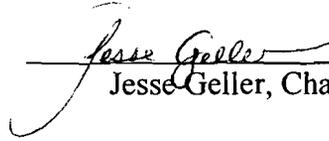
The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant the Special Permit relief requested and that the petitioner has satisfied the requirements necessary for relief under Sections 6.04.12, 8.02.2, and 9.05 of the Zoning By-Law 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 condition:

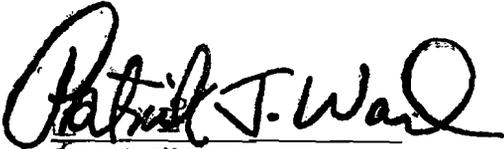
- 1) Prior to issuance of a building permit, a final site plan, indicating all setbacks, dimensions and materials for the parking area and all front yard improvements, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2) Prior to issuance of a building permit, final plans for the retaining wall shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 3) No vehicle shall be parked so that it overhangs or obstructs the sidewalk.**
- 4) Prior to the issuance of a Building Permit, the petitioner shall obtain a curb-cut permit from the Transportation Department.**
- 5) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; and 2) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.**

Unanimous Decision of  
The Board of Appeals

  
\_\_\_\_\_  
Jesse Geller, Chairman

Filing Date: November 5, 2010

A True Copy  
ATTEST:



RECEIVED  
TOWN OF BROOKFIELD  
TOWN CLERK  
Patrick J. Ward  
2010 NOV - 5  
Board of Appeals