



Town of Brookline

Massachusetts

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

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2010-0054

Petitioner, George Warner, applied to the Building Commissioner for permission to subdivide land at 397 Newton 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 7:30p.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 10 and 17, 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: **WARNER, GEORGE CUNNINGHAM, E.W.**
Owner: **WARNER, GEORGE CUNNINGHAM, E.W.**

Location of Premises: **397 NEWTON ST**
Date of Hearing: **October 28, 2010**
Time of Hearing: **7:30 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. 5.50; Front Yard Requirements, variance required. (House granted relief in 1980 and garage is pre-existing, non-conforming as to setback).**
- 3. 5.60; Side Yard requirements, variance required. (Garage).**
- 4. 6.04.5.c.1; Design of All Off-Street Parking Facilities, variance required. (Parking in front yard).**
- 5. 6.04.5.c.2; Design of All Off-Street Parking Facilities, variance required. (Driveway setback).**
- 6. 6.04.12; Design of All Off-Street Parking Facilities, special permit required.**
- 7. 8.02.2; Alteration or Extension, special permit required.**

Of the Zoning By-Law to **Subdivision of land requiring BOA relief at 397 NEWTON ST.**

Said premise located in a **M-1.5 (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.

**Enid Starr
Jesse Geller
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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, Christina Wolfe and Mark Zuroff. The Petitioner, George Warner, presented his case before the Board.

Mr. Warner stated that there may have been some confusion among his neighbors because the 397 Newton Street advertisement incorrectly represented that his property was in a M-1.5 zoning district. He said he tried to explain the mistake to his neighbors that were concerned that they may be in an apartment house district. He said that his neighbors expressed support for his proposal.

Mr. Warner advised the Board that on 16 July, 1980 the Board of Appeals granted relief in the form of a special permit to construct an addition within the front yard setback of the subject property.

Mr. Warner said that 387 and 397 Newton Street are two adjacent lots which total 59,820 s.f. that he and his wife hold in common ownership with their adult children. Each lot contains one single-family home; 387 Newton Street has an attached garage and 397 Newton Street has a detached garage. The homes are set toward the street and have large rear yards which taper at the rear of the lot.

Mr. Warner said that he is proposing to create a third [rear] lot from the two existing lots. Lot 1 (397 Newton Street) will be 16,015 square feet, Lot 2 (387 Newton Street) will be 15,034 square feet, and Lot 3 (new lot) will be 28,718 square feet. Lot 3 will be a “flag lot” configuration with a narrow 25’ strip with frontage on Newton Street, which will accommodate a new driveway. The access strip, however, will create a deficient side yard setback [10.9’] for the freestanding garage at 397 Newton Street. Mr. Warner said he is proposing to construct a new driveway for Lot 1/397 Newton Street that will run along the new property line for Lot 3, and will provide access to the existing parking area at the rear of the existing freestanding garage. The proposed new driveway for Lot 1 will be adjacent to the proposed new driveway for Lot 3.

He said that he understood that in order for the Board to consider dimensional relief by Special Permit under Section 5.43 of the Zoning By-Law he needed to provide a counterbalancing amenity. He said that he is proposing to provide a wood fence along the property line to screen the new driveway from 387 Newton Street and new plantings along the driveway and in front the existing garage. Mr. Warner said that both existing residences will still comply with the Floor Area Ratio (FAR) requirements after the subdivision.

The Chairman asked whether anyone wished to speak in favor or in opposition to the proposal. Patrick Supanc, a neighbor across the street at 384 Newton St., said that while he was initially confused regarding the advertisement and the reference to the M-1.5 zoning district, after speaking with Mr. Warner, he understands the proposal and is in support of the petition before the Board.

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

Section 5.50 – Front Yard Setback: 397 Newton Street received zoning relief to construct an addition within the front yard setback. The required setback in an S-15 district is 25’. The existing setback for the residential structure is 20.4’ and the garage is 10.6’. Both conditions are pre-existing nonconformities.

Section 5.60 – Side Yard Setback: The setback for the freestanding garage at 397 Newton Street will be made nonconforming with the subdivision. The required setback for an S-15 district is 15’ for accessory structures taller than 15’; the garage is proposed to be setback 10.9’ from the new side lot line. In addition, both existing side yard setbacks at 387 Newton Street are deficient; however, the location of the property lines where both deficiencies exist is not proposed to be altered.

Dimension Requirements	Required	Existing	Proposed	Finding
Front Yard Setback (existing house at 397 Newton St.)	25 feet	20.4 feet	20.4 feet	Pre-existing Nonconforming
Side Yard Setback (existing garage at 397 Newton St.)	15 feet	35.9 feet	10.9 feet	Special Permit/Variance*
Side Yard Setback (existing 387 Newton Street - West)	15 feet	9.1 feet	9.1 feet	Pre-Existing Nonconforming
Side Yard Setback (existing	15 feet	13.9 feet	13.9 feet	Pre-Existing

387 Newton Street - East)				Nonconforming
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* Under Section 5.43 the Board of Appeals may waive dimensional requirements if counterbalancing amenities are provided. The applicant is proposing to provide a wood fence along the property line to screen the new driveway from 387 Newton Street and new plantings along the driveway and in front the existing garage.

Section 6.04 – Design of Off-Street Parking Facilities:

-.5.c.1 – Front Yard Setback

-.5.c.2 – Side Yard Setback

NEW PARKING FACILITIES	Required	Existing	Proposed	Finding
Front Yard Setback (existing garage at 397 Newton St.)	25 feet	10.6 feet	10.6 feet	Pre-existing Nonconforming
Side Yard Setback (proposed driveway at 397 Newton St.)	5 feet	10 feet (est.)	0 feet	Special Permit/Variance*

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

Section 8.02.2 - Alteration or Extension:

A special permit is required to alter a nonconforming condition.

Ms. Selkoe said that the Planning Board was supportive of the proposed relief to facilitate an ANR subdivision plan to create a third lot. The purpose of the subdivision is to create a developable lot for the applicant to build a new residence for himself and his wife, and have his children live in the other two homes at 387 & 397 Newton Street. The majority of the setback relief is due to pre-existing conditions and the applicant is proposing to provide screening and landscaping to offset any potential impact on neighboring properties (including 387 Newton Street) including headlight glare and other nuisances. The lot is appropriately sized for three single-family homes and as the rear abutter is the Robert T. Lynch Municipal Golf Course, it appears the impact on neighboring properties should be minimal. Therefore, the Planning Board recommends approval of the plans as submitted by Michael Clifford, dated 7/22/2010, subject to the following condition:

1. *The petitioner shall submit to the Building Commissioner, proof of recording of the decision at the Norfolk County Registry of Deeds within 45 days of the filing date of the Board of Appeals decision.*

The Chairman then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard stated that the proposal before the Board represented the best use for the land behind the properties and provided an opportunity for a true family subdivision. Mr. Shepard said that the Building Department was supportive of the project as well as the condition proposed by the Planning Board.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant the Special Permit relief as requested and that the petitioner has satisfied the requirements necessary for relief under Sections 5.43, 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:

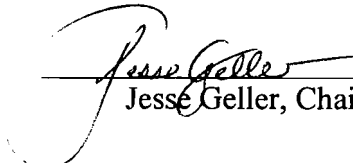
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the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

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

1. **The petitioner shall submit to the Building Commissioner, proof of recording of the decision at the Norfolk County Registry of Deeds within 45 days of the filing date of the Board of Appeals decision.**

Unanimous Decision of


The Board of Appeals



Jesse Geller, Chairman

Filing Date: December 3, 2010

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Patrick J. Ward
Clerk, Board of Appeals