



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. 2010-0062**

Petitioner, Jay Falik, applied to the Building Commissioner for permission to increase the width of the curb cut in front of his condominium at 40 University Road. The application was denied and an appeal was taken to this Board.

On September 23, 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 November 9, 2010 at 7:30 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 October 19 and 26, 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: FALIK, JAY
Owner: FALIK, JAY
Location of Premises: 40 UNIVERSITY RD
Date of Hearing: November 09, 2010
Time of Hearing: 7:30 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. 6.04.4.c; Design of All Off-Street Parking Facilities, curb cut, special permit required.**
- 2. 6.04.5.b; Design of All Off-Street Parking Facilities, setback from street and side lot line, variance required.**
- 3. 8.02.2; Alteration or Extension, special permit required**

of the Zoning By-Law to INCREASE WIDTH OF CURB CUT REQUIRING BOA RELIEF AT 40 UNIVERSITY ROAD BRKL.

Said premise located in a **M-1.0 (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, Jonathan Book and Mark Zuroff. Mr. Falik presented his case before the Board.

Mr. Falik described the home at 40 University Road as a Queen Anne-style two-family condo building near Washington Square. The building was constructed in 1893, and there is a three-car parking area in the front yard. Surrounding properties are residential and typically range from single-family to three-family dwellings.

Mr. Falik said that he proposes to extend the existing curb cut serving the dwelling's parking area by approximately 5.5 feet to allow for easier ingress and egress for the parking area's third parking space. The existing parking area currently allows for three vehicles; however, the curb cut does not span the entire width of the parking area. Mr. Falik said he has difficulty moving his vehicle in and out of the third parking space, and the curb appears to have sustained some damage due to this condition. He said that he would like to line up the curb cut with the edge of the parking area, increasing the entire width of the curb cut to approximately 27 feet. Mr. Falik stated that the curb cut would still be 6 feet away from the street tree currently located in front of the dwelling.

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

Lara Curtis Hayes, Senior Planner, delivered the findings of the Planning Board.

Section 6.04.4.c – Design of All Off-Street Parking Facilities: Entrance and exit drives shall be a maximum of 20 feet wide at the street lot line in residence districts, except that the Board of Appeals by special permit may modify these limitations upon reports from the Commissioner of Public Works and the Director of Transportation that an increased width would facilitate traffic and be safer. Special permit required. *Special permit required.*

Section 6.04.5.b – Design of All Off-Street Parking Facilities: In M-1.0 districts, the surfaced area of a parking lot and all entrance and exit drives shall be set back a minimum of 10 feet from all street lots lines and five feet from all other lot lines. This is a pre-existing non-conforming condition that is not being altered with this proposal.

Section 8.02.2 – Alteration or Extension: A special permit is required to alter and extend this non-conforming curb cut and parking area.

Ms. Curtis said the Planning Board was not opposed to the proposal to widen the site's curb cut to facilitate the maneuvering of vehicles in and out of the existing parking area. The Board was not

pleased with the width of the existing parking area, but this is a pre-existing condition; widening the curb cut to fit the parking area would help avoid further damage to the curb, and the parking space will be more useful to the dwelling's occupants. Since the curb cut extends beyond the driveway on the opposite side, the Board would encourage the Department of Public Works to consider installing curbing on the driveway's left side so that the curb cut matches the driveway width the next time improvements to the road are performed. In order to ensure the parking area is used for only three vehicles and no tandem parking occurs on site, a vegetative barrier should be installed between the parking area and the patio immediately behind the parking area. It appears there used to be such a barrier that has since been removed. Without such a divide, vehicles would be able to park on the patio, and they have in the past. Increasing the width of the curb cut under this proposal should not facilitate more vehicles parking on site. Therefore, the Planning Board recommended approval of the proposal to widen the curb cut, subject to the following conditions:

- 1) Prior to issuance of a building permit, a final plan indicating the exact width and location of the curb cut, including details regarding the location of the street tree, and details for a fence or vegetative barrier between the rear of the parking area and the side patio, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
- 2) The following requirements for widening the curb cut shall be met: 1) the existing curbing to be removed shall be saw cut to the appropriate length; 2) the existing sidewalk to be removed shall include the right most apron panel as well as sidewalk from this point to the panel which has been lifted behind the tree; 3) care shall be taken to protect the roots of the tree; and 4) the new apron shall be shaped to conform to the existing aprons in the area.
- 3) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site plan indicating the proposed width of the curb cut, 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 Chair then called upon the Building Commissioner to deliver the comments of the Building Department. Mr. Shepard said that the initial developer of the property was directed to install the vegetated area to separate the parking area from the patio. He said that junipers about 4 feet tall were planted but along the way were either removed or died. He said that the Building Department recommended the installation of vegetation suitable to perform the same purpose. He reported that the initial developer did a good job with the property and it is well maintained. As to condition #2 proposed by the Planning Board, Mr. Shepard said that a curb-cut permit is required from the Department of Public Works and they have control over all the facets of that condition. He therefore recommended removal of condition #2. He said that the Building Department is supportive of the relief requested as well as the recommended conditions of the Planning Board.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits and that the petitioner has satisfied the requirements necessary for relief under Sections 6.04.4.c, 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, a final plan indicating the exact width and location of the curb cut, including details regarding the location of the street tree, and details for a fence or vegetative barrier between the rear of the parking area and the side patio, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**

- 2) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site plan indicating the proposed width of the curb cut, 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

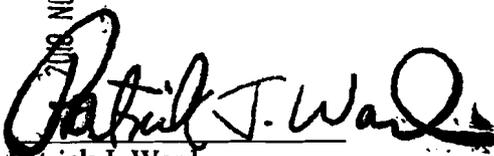


Enid Starr, Chairman

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

Filing Date: November 15, 2010

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals