



Town of Brookline

Massachusetts

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

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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2010-0064

Petitioner, Alex Politman, applied to the Building Commissioner for permission legalize a parking area constructed without benefit of a building permit at 191 Winthrop Road. The permit was denied and an appeal taken to this Board.

On 2 September 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 2 December 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 11 and 18 November 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: ADA MANAGEMENT LLC C/O POLITMAN, ALEX
Owner: ADA MANAGEMENT LLC C/O POLITMAN, ALEX
Location of Premises: 191 WINTHROP RD
Date of Hearing: December 02, 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; Design of All Off-Street Parking Facilities.
 - 6.04.2.b; Stall Length, variance required. (see Fig. 6.01 on page 6-13)
 - 6.04.2.d; Aisle Width, variance required.
 - 6.04.2.e; Number of compact car spaces, variance required.
 - 6.04.4.b; Width of entrance and exit drives, variance required.
 - 6.04.4.c; Curb cut width, variance required.
 - 6.04.4.e; Grade of driveway 20' from lot line, variance required.
 - 6.04.5.b; Paved area setback; variance required.
 - 6.04.6.a and b; Illumination to be shielded; variance required.
 - 6.04.9.a; Parking lot markings; variance required.
 - 6.04.9.b; Area not landscaped shall be paved and drained to the satisfaction of the Building Commissioner.
 - 6.04.12; Substitution of dimensional requirements to serve existing structure; special permit required.
4. 8.02.2; Alteration or Extension, special permit required.

Of the Zoning By-Law to LEGALIZE PARKING AREA CONSTRUCTED W/O PERMIT REQUIRING BOA RELIEF at 191 WINTHROP RD at 191 WINTHROP RD.

Said premise located in a M 1.5 (multi-family) residential 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, Mark Zuroff and Board Members, Enid Starr and Lisa Serafin. The Petitioner, Alex Politman, was represented by Attorney Jeffrey Allen of Denner Pellegrino, L.L.P., Four Longfellow Place, 35th Floor, Boston, MA.

Attorney Allen described 191 Winthrop Road as the site of a multi-family three story brick dwelling with seven units, which has been renovated. The property slopes steeply down from the street to the rear. There is a driveway to the right of the building on a six foot wide right of way and the distance between the walls of 191 Winthrop and the abutting building is approximately seven feet. The rear portion of the driveway is extremely steep and retaining walls have been built to provide a level area in the backyard, where there are four parking spaces. There are also two parking spaces in front of the building. The neighborhood is primarily multi-family buildings and is not far from Beacon Street.

Mr. Allen said that his client, Alex Politman was before the Board seeking relief for a parking area he constructed in the rear yard. He said that Mr. Politman had received a building permit to make renovations to this multi-family building and submitted a site plan showing a backyard patio and a garden. Later, the Deputy Building Commissioner discovered that in place of a patio and garden in the back yard, there is a parking area for four cars. Mr. Allen said that after construction of the retaining walls shown on the subject plan his client changed his mind and proceeded to construct the parking area. Mr. Allen maintained that there had been parking in the

rear for a long time. He said his client simply made a mistake in not applying for a building permit when he changed his mind regarding the project. Mr. Allen reported that all the relief his client needed was by special permit and he presented photographs showing similar parking scenarios in the vicinity.

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

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

Section 5.91 – Minimum Usable Open Space

There is no usable open space on the property since the paved parking area covers the entire backyard.

Section 6.04 – Design of All Off-Street Parking Facilities:

Section 6.04.2.b – Stall Length

Section 6.04.2.d – Aisle Width

Section 6.04.2.e – Number of compact car spaces

Section 6.04.4.b – Width of entrance and exit drives

When the application was submitted to the Building Department, it was unclear how many cars were parking on site. Since there are six vehicles parked on the site (two in front of the building and four in the backyard), **the above sections do not apply per Section 6.04.11**, which states that Sections 6.04.2 and 6.04.4 a and b. do not apply to parking lots for six vehicles or fewer.

Section 6.04.4.c – Curb cut width

Section 6.04.4.e – Grade of driveway 20' from lot line

Section 6.04.5.b – Paved area setback

Section 6.04.6.a – Illumination to be shielded

Section 6.04.9.a – Parking lot markings

Section 6.04.9.b – Area not landscaped shall be paved and drained subject to Bldg Comm.

All of the above sections could be granted by special permit under **Section 6.04.12**, as the Board of Appeals may waive dimensional requirements for new parking facilities to serve existing buildings.

Section 8.02.2 – Alteration or Extension

A special permit is required for the alteration or extension of a non-conforming structure or use.

Ms. Selkoe reported that the Planning Board was not opposed to legalizing the rear parking area. The applicant has indicated this rear area has always been used for parking, and that the construction improved what was a dirt parking area and driveway. Although it would have been an improvement if the landscaping plan that was originally submitted to the Building Department and indicating construction of a rear patio and garden had been implemented, the Board understands there is a need for parking in this area. The Planning Board appreciates that the applicant used pavers to improve the parking area and driveway, as these are more attractive than asphalt. Although the slope of the driveway is extreme and its width is narrow, this is a relatively common situation in the neighborhood. Therefore, the Planning Board recommends approval of the rear parking area, subject to the following conditions:

- 1) Prior to issuance of a building permit, a final site plan showing the parking area, driveway, and all retaining walls, and indicating all dimensions and materials, 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 with the Board of Appeals decision: 1) a final site and parking plan, stamped and signed by an 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. Mr. Shepard stated that he was not opposed to the use of the rear of the property only to the process that appears to have been avoided to make the changes. He said that all too often it appears cheaper and more expedient to violate the By-Law and to beg forgiveness later. Mr. Shepard requested that the Board consider the payment of a fine prior to the issuance of a building permit.

During deliberation the Board also expressed disdain over the lack of a building permit for the work performed at 191 Winthrop Road. Specific to the fine proposed by the Building Commissioner, the Chairman pointed out that Section 9.02 Penalty for Violation, provides the Commissioner with the authority to levy a fine not exceeding \$300.00 for each offence, each day that such violation continues is considered a separate offense. The Chairman recommended that the Building Commissioner consider exercise of his powers to levy a fine if he thinks it appropriate.

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 Section 6.04.12, as the Board of Appeals may waive dimensional requirements for new parking facilities to serve existing buildings. Also, the Board 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 site plan showing the parking area, driveway, and all retaining walls, and indicating all dimensions and materials, 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 with the Board of Appeals decision: 1) a final site and

parking plan, stamped and signed by an 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



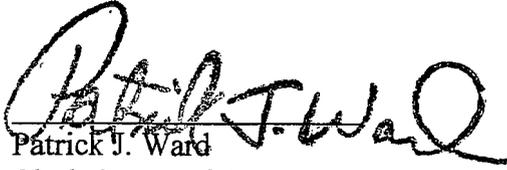
Mark Zuroff, Chairman

Filing Date: January 21, 2011

A True Copy

ATTEST:

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2011 JAN 21 A 7:33



Patrick J. Ward
Clerk, Board of Appeals