



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. 090003

Petitioners, Michael Hackel and Danielle Remis, applied to the Building Commissioner for permission to construct a new driveway at their home at 34 Beech Road. The application was denied and an appeal was taken to this Board.

On January 15, 2009, 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 April 2 2009, at 7:15 p.m. in the Selectmen's Hearing Room, sixth floor, Town Hall 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 March 12 and 19, 2009 in the Brookline Tab, a newspaper published in Brookline. 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: MICHAEL HACKEL

Location of Premises: **34 BEECH RD BRKL**
Date of Hearing: **04/02/09**
Time of Hearing: **7:15 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th floor**

1. For the Design of All Off-Street Parking Facilities

6.04.5. c. 1, Variance Required.

6.04.5. c. 2. Variance Required.

6.04.12, Special Permit Required.

2. 8.02.2, Alteration or Extension, Special Permit Required

of the Zoning By-Law to construct a new driveway per plans

at **34 BEECH RD BRKL.**

Said Premise located in a S-10 (Single Family) 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, Jesse Geller, and Jonathan Book. Fred Lebow of FSL Associates, 18 Shepard Street, Boston, MA 02135 presented the case before the Board.

Mr. Lebow stated that the home at 34 Beech Road was built in 1905 and fronts on Longwood Mall. The home is a 2.5 story colonial constructed of stucco and stone and is situated on one of the smallest lots in the neighborhood. While there is currently a parking pad on the front of the lot, it is located on the narrow side of the lot very near the neighboring house. The driveway abuts a newly excavated driveway, which has lowered the topography of the neighboring property by 2' and has made the existing driveway unsafe. The neighborhood consists of large single family homes, is bordered by Longwood Towers, and is a contributing property of the Longwood National Register Historic District.

Mr. Lebow said that the petitioners propose to remove the existing parking pad, and construct a new driveway and parking area on the opposite, western, side of the lot. The proposed driveway will be near the front door of the home, and the parked cars will be set back 21'6" from the street. The proposed driveway will be 12' wide to accommodate a tandem arrangement for two cars, and will have no set-back from the side lot line. Board members asked about the removal of walls and shrubbery to accommodate the new driveway and Mr. Lebow explained the process. The Chair asked about the width of the existing walkway relative to the proposed driveway. Mr. Lebow stated the existing walkway would be expanded and that best practices would be employed to protect against damage to the roots of the trees on the neighbor's property. As to the asphalt on the other side of the property, Mr. Lebow said that it would be removed and the area landscaped.

The Chair asked whether anyone in the audience wished to speak in favor or in opposition to the proposal. Ms. Shirley Feuerstein of 42 Beech Road, the immediate abutter to the West, said that while supportive of the project she was concerned about potential damage to the well established trees along her property line. She said that trimming of the trees by her neighbors at

34 Beech Road may have left the trees susceptible to storm damage. Ms. Feuerstein said that she hoped that the petitioners would retain the services of a Certified Arborist to see whether the trees have been compromised and if so, recommend remedial action. She said she was also concerned about the roots of the trees given the construction activity surrounding the installation of the new driveway and she hoped an arborist could weigh-in on that as well.

Courtney Synowiec, Planner, delivered the findings of the Planning Department:

Driveway Dimensions	Existing	Proposed	Required	Finding
Front Setback	0	21'6"	20'	Complies
Side Setback	0	0	5'	Variance/ Special Permit*

* Under §6.04.12, the Board of Appeals may grant a special permit in lieu of dimensional requirements for the installation of new parking facilities for existing structures.

Ms. Synowiec said that the Planning Board has no objection to the construction of a driveway more conveniently located near the entrance of the home for greater ease of access for the residents. Additionally, the revised location allows the cars to no longer be parked within the front yard setback. However, the Planning Board has concerns about the preservation of the character of the house and does not want to see the elimination of the wall and the wrought iron arch feature at the entry. The Board would also like to see a landscape screen between the parked cars and the neighbor's house and therefore suggests that the applicant work with the abutter to plant a landscape screen, on her property, if she is willing. Therefore, she said, the Planning Board recommends approval of the proposal and submitted site plan, entitled "34 Beech Road Proposed Driveway," prepared by FSL Associates and last dated 3/6/09, subject to the following conditions:

1. **Prior to issuance of a building permit, the original driveway and curb cut shall be removed and landscaped, subject to the review and approval of the Assistant Director of Regulatory Planning.**
2. **No vehicle shall be parked in the property's front yard setback.**

3. **Prior to issuance of a building permit, the applicant shall submit a final landscaping plan, including planting on the neighbors property if she agrees, subject to the review and approval of the Assistant Director of Regulatory Planning**
4. **Prior to issuance of a building permit, the applicant shall submit modifications to the front entry and wrought iron feature that will preserve the architectural character of the house for review and approval by the Assistant Director of Regulatory Planning.**
5. **Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Michael Shepard, Building Commissioner, delivered the comments of the Building Department. He said that the home is located in a park-like setting and has been extremely well cared for. Mr. Shepard said that the petitioner's request was driven by the considerable construction activity on the adjacent property at 26 Beech Road. As to the testimony from Mr. Lebow regarding an underground oil tank on the property at 26 Beech Road, Mr. Shepard said he would contact the owner and the Fire Department regarding its removal. Regarding an arborist's report, Mr. Shepard said that he recommended that the report be reviewed by the Town Tree Warden before a permit is issued for the project. Mr. Shepard said that the Building Department is supportive of the proposal as well as the recommended conditions of the Planning Board.

The Chair opined that although the required setback for parking facilities is not met, the proposal seeks to retain the existing condition only on a different side of the property. She said that the front yard set-back for parking is currently non-conforming and the proposal before the Board would provide a conforming set-back for parking. She said she was certainly sympathetic to the neighbor's concern for her well established trees and inquired whether the petitioner would be agreeable to a condition requiring the use of a Certified Arborist. Mr. Lebow replied that he had discussed this with his client and they are comfortable with the use of an expert in this

regard. The Chair inquired whether the petitioner is agreeable to condition #4 of the Planning Board's recommended conditions and Mr. Lebow replied that his client intended to preserve the architectural integrity of the front entry including modifications to the wrought iron.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the requirements of Section 6.04.12, dimensional requirements for new parking facilities and Section 8.02.2, pre-existing, non-conforming lots or structures, of the Zoning By-Law having been satisfied and it being desirable to grant a Special Permits in accordance with the relief requested the Board makes 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.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

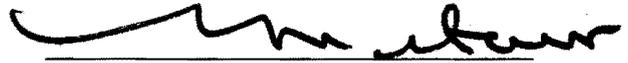
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1. Prior to issuance of a building permit, the original driveway and curb cut shall be removed and landscaped, subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2. No vehicle shall be parked in the property's front yard setback.**
- 3. Prior to issuance of a building permit, the applicant shall submit a final landscaping plan, including planting on the neighbors property, if she agrees and a report of a certified arborist to be reviewed by the Town Tree Warden all subject to the review and approval of the Assistant Director of Regulatory Planning.**

4. Prior to issuance of a building permit, the applicant shall submit modifications to the front entry and wrought iron feature that will preserve the architectural character of the house for review and approval by the Assistant Director of Regulatory Planning.
5. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of

The Board of Appeals



Enid Starr, Chairman

Filing Date: April 15, 2009

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