



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

# *Town of Brookline*

## *Massachusetts*

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

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 090004

Petitioner, James P. Lockwood, applied to the Building Commissioner for permission to construct a second story addition above the existing one story building, and to convert the entire premises into a single family residence with accessory parking for two cars per plans at 37 Franklin Street. The application was denied and an appeal was taken to this Board.

On 18 December 2008, 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 5 March 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 12 and 19 February 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: **LOCKWOOD JAMES P**  
Location of Premises: **37 FRANKLIN ST BRKL**  
Date of Hearing: **03/05/09**  
Time of Hearing: **7:15 p.m.**  
Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup> floor**

A public hearing will be held for a variance and/or special permit from:

- 1) **5.10; Minimum Lot Size; Variance Required.**
- 2) **5.15.2; Exception to Minimum Lot Size and Lot Width Requirements, Special Permit Required.**
- 3) **5.43; Exceptions to Yard and Setback Regulations, Special Permit Required.**
- 4) **5.60; Side Yard Requirements, Variance Required.**
- 5) **5.70; Rear Yard Requirements, Variance Required.**
- 6) **For the Design of All Off-Street Parking Facilities:**
  - **6.04.5.b; Variance Required.**
  - **6.04.12; Special Permit Required.**
- 7) **8.02.2; Alteration or Extension; Special Permit Required** of the Zoning By-Law to construct a second story addition above the existing one story building, and to convert the entire premises into a single family residence with accessory parking for two cars per plans at **37 FRANKLIN ST BRKL.**

Said Premise located in a **M-1.0** (Apartment House) 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. Due to a scheduling conflict the hearing location was moved to room 103, on the first floor of the Town Hall. Notice of the change in location was posted at all entrances to the building as well as in the

entry to the Selectmen's Hearing Room. Present at the hearing was Chairman, Jesse Geller and Board Members, Mark Allen and Jonathan Book. Attorney Michael W. Merrill, 100 State Street, Suite 200, Boston, MA 02109 presented the case before the Board.

Attorney Merrill said that in 1978 the Board of Appeals granted approval to subdivide 37 and 41 Franklin Street into two separate lots, one with a three-family residential dwelling and the other, #37, with a commercial garage building. Attorney Merrill said that 37 Franklin Street is located between Rice and Roberts Streets, with a single-story garage building on a lot that is nearly entirely paved. The garage is currently used for the storage of construction equipment and materials, which is a legally non-conforming use. The rest of the lot is used for parking. The surrounding lots are all residential, ranging from single to multi-family dwellings. A large apartment building exists to the rear of the garage.

Attorney Merrill said that the petitioner, James Lockwood, proposes to construct a second story to the garage and convert the entire building into a single-family dwelling. The second story addition would not expand the building's footprint; however, a porch with a small covering would be constructed on the building's side to provide for a second egress towards the parking area. The garage's current vehicle bays would be converted to new windows surrounded by wood mdo paneling; one bay has already been converted into the primary doorway. The new second story would be finished with a horizontal siding such as hardiplank. The roof would be flat, with a slight slope to the rear. Two parking spaces would be located directly to the left of the building in the side yard. The side lot lines are currently partly fenced with chain link; along the rear lot line is wood fencing. He said that Mr. Lockwood intends to remove the paving in front of the building that is currently used for parking and install landscaping.

Attorney Merrill said that the project would convert a pre-existing non-conforming use to one that is conforming. He said that his client seeks relief for exception to minimum lot size, side and rear set back requirements, parking relief and a special permit for a pre-existing, non-conforming structure. Attorney Merrill said that this conversion is appropriate to and would not adversely affect the neighborhood. He described Mr. Lockwood as an accomplished contractor/designer with a sterling reputation in the community. Attorney Merrill stated that prior to the Board of Appeals hearing a letter from an abutter, Thomas Daly, was received requesting an accommodation with respect to his use of parking encroaching onto Mr. Lockwood's property. He said that the owners of 21 Rice Street have expanded the parking onto Mr. Lockwood's property. Mr. Lockwood said he will work with the neighbor to try to reach some accommodation regarding parking.

Mark Allen asked about the Planning Board comment regarding increasing the slope of the shed roof to allow an increase in height of the second floor windows. Mr. Lockwood responded that he was attempting to keep the slope low in deference to neighbor concerns about reduced light and he was also concerned that additional height would make the building size and mass appear greater. He said that he would work with planning staff to come up with fenestration that would complement the building.

Chairman Geller stated that the parking issue was one of encroachment by a neighbor on the property of 37 Franklin Street and the issue was not properly before the Board in that it was a potentially a dispute, civil in nature.

The Chairman asked whether anyone wished to speak in favor or against the proposal. Several neighbors commented that the proposed structure design elements were not in keeping

with the neighborhood and lacked design character. One neighbor stated that the design of the building had the appearance of a gas station, with the bays filled in and with windows with a sloped top; and that the building had no architectural interest. She said that the neighborhood deserved better. Two other neighbors commented that due to the proximity of the structure, the increased height would severely impact the light they received on their home and that the proposal would decrease the available parking in the neighborhood.

Courtney Synowiec delivered the findings of the planning department staff.

**Section 5.10 – Minimum Lot Size:** The minimum lot size requirement for a single-family home in an M-1.0 zoning district is 4,000 s.f. The subject property’s lot size is 3,110 s.f.

**Section 5.15.2 – Exception to Minimum Lot Size and Lot Width Requirements:** The Board of Appeals by special permit may allow a single-family home to be constructed on a lot that does not meet minimum lot size requirements if the dwelling is on a lot that was contiguous to another lot in the same ownership on or after July 27, 1962; the yard requirements are observed; and the lot width is not less than three-fourths than required. This property was subdivided after 1962 and exceeds the lot width requirement of 40 feet. *Special permit required.*

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

**Section 5.60 – Side Yard Requirements**

**Section 5.70 – Rear Yard Requirements**

**Section 6.04.5.b – Design of All Off-Street Parking Facilities:** The surfaced area of parking lots and all entrance and exit drives shall be set back a minimum of 10 feet from the street lot line and five feet from all other lot lines.

**Section 6.04.12 – Design of All Off-Street Parking Facilities**

**Section 8.02.2 – Alteration or Extension:** A special permit is required to alter and extend this nonconforming structure.

	Required	Existing	Proposed	Finding
<b>Side Yard Setback</b>	7.5 feet	5.9 feet	5.9 feet	Special Permit*
<b>Rear Yard Setback</b>	30 feet	3.2 feet	3.2 feet	Special Permit*
<b>Parking: Front Yard Setback</b>	10 feet	0 feet	15.9 feet	Complies
<b>Parking:</b>	5 feet	0 feet	0 feet	Special Permit**

<b>Side Yard Setback</b>				(previously existing nonconformity)
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\*Under Section 5.43, the Board of Appeals may allow by special permit alternate dimensions for setback and yard requirements if counterbalancing amenities are provided.

\*\*Under Section 6.04.12, the Board of Appeals may allow by special permit the substitution of other dimensional requirements for parking facilities when new parking facilities are being installed to serve existing structures, provided the substitution is necessary for the installation of the off-street parking spaces that would be required for a similar new building.

Ms. Synowiec said that the Planning Board was supportive of the proposal to construct a second-story to the single-story garage building and convert the structure into a single-family dwelling. The second-floor addition has been designed to be in the same character as the first story, and it does not expand upon the building's footprint. The building is surrounded by parking areas on neighboring lots, which provide a small buffer between the subject building and neighboring dwellings. Additionally, the conversion will bring a non-conforming use into conformance with the residential zoning district. Surrounding structures are all residential, and most structures are larger and taller than this garage.

The Planning Board was pleased that the parking immediately in front of the structure will be removed, which will improve both the building's appearance and the streetscape. This removal, as well as the installation of a curb, should be shown on a final landscaping or site plan prior to issuance of a building permit. The parking on the side of the building has existed since the property's first subdivision in 1978, so its retention is not expected to be detrimental to surrounding properties. Additionally, the Board would like to see the slope of the mostly flat roof moderately increased, allowing for slight modifications to the second-floor windows, possibly making them taller, to improve the appearance of the upper floor addition. Therefore, the Planning Board recommended approval of the proposal and submitted plans, prepared by

Osborn Studio and last dated 1/31/09, the site plan prepared by AGH Engineering and dated 10/16/08, and the schematic landscape plan dated 2/26/09, subject to the following conditions:

1. **Prior to issuance of a building permit, a final landscaping plan, indicating the paving to be removed in front of the dwelling, front curb details, and all fencing and new plantings on the property, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
2. **No vehicles shall be parked in the property's front yard.**
3. **Prior to issuance of a building permit, final elevations, indicating modifications to the windows and roofline, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
4. **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; 2) final elevations, stamped and signed by a registered architect; and 3) 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. Mr. Shepard stated that the ultimate aim of zoning was to have all properties compliant. He opined that the proposal before the Board would bring the property into compliance as to use. He said that once converted to a residential use, the property could never become a non-conforming workshop again. He said that the Building Department was supportive of the project and the conditions recommended by the Planning Board. He said that Mr. Lockwood had a great reputation and the proposal would have a positive effect upon the neighborhood.

Board Member Allen asked about the concrete masonry unit (cmu) bottom section of the building and whether the petitioner would consider in the alternative the use of some type of wood siding on the lower area. Mr. Lockwood said that although he liked the appearance of the painted block, he would install either vertical or horizontal wood siding to cover the block. Mr.

Allen also asked about the installation of curbs and a new sidewalk in front of the house. Mr. Lockwood represented that he intended to install both. Board Member Book said that the height of the proposed structure was less than the maximum allowed and that any additional increase in height of the existing building would by definition effect the light on adjoining properties. Chairman Geller stated that all the relief required could be granted by special permit. He reminded those in attendance that the bar for a special permit is considerably lower than that for a variance.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that the requirements of Section 9.05, Section 5.15.2, Section 5.43, Section 6.04.12 and Section 8.02.2 of the Zoning By-Law have been satisfied and it is desirable to grant the 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:

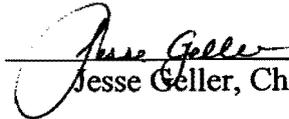
- 1. Prior to issuance of a building permit, a final landscaping plan, indicating the paving to be removed in front of the dwelling, front curb and sidewalk details, and all fencing and new plantings on the property, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**

2. No vehicles shall be parked in the property's front yard.
3. Prior to issuance of a building permit, final elevations, indicating modifications to the windows, roofline and exterior materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
4. 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; 2) final elevations, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

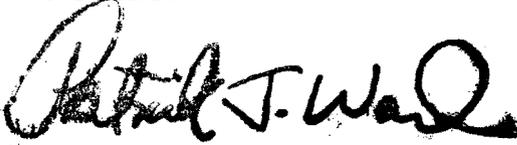
RECEIVED  
 TOWN OF BROOKLINE  
 TOWN CLERK  
 MAY 7 2:44  
 Filing Date:

Unanimous Decision of  
 the Board of Appeals

Filing Date: May 7, 2009

  
 Jesse Geller, Chairman

A True Copy  
 ATTEST:



Patrick J. Ward  
 Clerk, Board of Appeals