



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

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 090021

Petitioner, Allen Drescher, applied to the Building Commissioner for permission to construct a parking area for two cars at 46 Welsh Road. The application was denied and an appeal was taken to this Board.

On 30 April 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 25 June 2009, at 7:00 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 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 4 and 11 June 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: **DRESCHER, ALLEN J**

Location of Premises: **46 WELSH RD BRKL**
Date of Hearing: **06/25/09**
Time of Hearing: **7:00p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th floor**

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

For The Design of All Off-Street Parking Facilities

6.04.5. c.1; (parking in front setback) Variance Required.
6.04.5.c.2; (parking in side setback) Variance Required
6.04.12; (new parking to serve existing building) Special Permit Required
8.02.2; Alteration or Extension, Special Permit Required of the Zoning By-Law to construct a parking area for two cars per plans at **46 WELCH RD BRKL.**

Said Premise located in a **S-25** (single family) 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, Jesse Geller and Board Members, Kathryn Ham and Jonathan Book. The petitioner, Allen Drescher, was represented by his attorney, Jacob Walters of Goldenberg & Walters, 7 Harvard Street, Brookline, MA 02445-7379.

Attorney Walters described the site at 46 Welch Road as a 2.5 story colonial single family home built in 1920. The home is the second to last home on Welch Road and sits next to a cul-de-sac. There currently is no parking on site, and the lot slopes downward toward Warren Street

thus leaving few areas on the lot where a parking area could potentially be installed. As Welch Road is a private road, the front lot line for 46 Welch Road extends well into the cul-de-sac.

Mr. Walters said that his client, Alan Drescher, is proposing to install a parking area at 46 Welch Road, with a 20 ft. wide curb cut on the side of a cul-de-sac. The parking area will accommodate two vehicles and is estimated to extend approximately 40' into the yard from the lot line. Mr. Drescher is proposing to park cars 18.5' from the front lot line and 10.4' from the side lot line, thus requiring setback relief. The parking pad will be supported by a retaining wall, for which details have not been made available. He said that the proposal is very similar to an existing parking pad within the front setback at 58 Welch Road, which has a two car garage and steeply sloped driveway on one side of the house, and a parking pad constructed of pavers connected to the cul-de-sac on the other side of the house.

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

Mr. Carl Goldberg of 58 Welsh Road said that the construction of another parking area on Welsh Road would exacerbate an already difficult situation involving plowing and storage of snow. He said that because of the cul-de-sac, Town snowplows would be forced to plow snow onto his property or in front of the stairs that lead to Warren Street. He inquired about the possibility of petitioner relocating the parking area to the other side of the home so it would not interfere with snow removal operations.

Polly Selkoe, Assistant Director for Regulatory Planning delivered the findings of the Planning Department:

Section 6.04 – Design of All Off-Street Parking Facilities
.5.c.1 – front yard setback

.5.c.2 – side setback in the front and side yards

NEW PARKING AREA	Required	Proposed	Finding
Front Yard Setback	30 ft.	18.5 ft.	Variance/Special Permit*
Side/Rear Yard Setback	20 ft.	10.4 ft.	Variance/Special Permit*

* Under **Section 6.04.12** the Board of Appeals may granted a special permit in lieu of dimensional requirements for new parking facilities that are installed to serve an existing building.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter or extend a non-conforming condition.

Ms. Selkoe said that the Planning Board is generally in favor of the proposed parking area. As the lot is not currently served by any parking facilities, the installation of a parking facility would be an improvement to the site. Currently, parking for this residence can only be accommodated by parking on the side of Welch Road, which is very narrow and somewhat challenging to navigate when there are vchieles parked on the road. However, because 46 Welch Road is currently for sale, the Planning Board wants to ensure quality materials are used for the driveway and the retaining walls and would like plans indicating all dimensions and materials to be submitted. Therefore, the Planning Board recommended approval of the proposal and plans by Verne Porter dated 11/5/08 subject to the following conditions:

1. The driveway shall be surfaced with pavers, and the retaining wall constructed of stone or comparable quality materials.
2. Prior to the issuance of a building permit, final plans including all relevant setback dimensions and delineated parking spaces shall be submitted for review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, final plans for the retaining walls and pavers including all dimensions and materials shall be submitted for review and approval of the Assistant Director of Regulatory Planning.

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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. He stated that the additional curb-cut requested by the petitioner would not, in his opinion, exacerbate the snow removal operations any more than the new parking at 58 Welsh Road did when it was constructed a short while ago. Mr. Shepard asked who was responsible for clearing the stairway down to Warren Street. The petitioner responded that since the stairs are located partially on his property and partially on Mr. Goldberg's property, he and Mr. Goldberg share that responsibility. Commissioner Shepard opined that both parties should be able to work-out a snow removal procedure satisfactory to both. When asked about the proximity of the fire hydrant to the curb-cut and potential safety issues Mr. Shepard responded that even without the new parking, cars would be in the street and potentially blocking the hydrant. Mr. Shepard stated that the Building Department was in favor of the project as well as the conditions recommended by the Planning Board.

The Chairman then asked Mr. Walters if he wanted to respond to any comments made and further asked Mr. Walters to specifically discuss the grounds under **Section 9.05** of the Zoning By-Law supporting the Board's grant of the relief requested. Mr. Walters responded by stating that removing the applicant's vehicles from Welsh Road would assist in both snow plowing and snow removal. Mr. Walters went on to say that the stairs leading to Warren Street were jointly owned by the property owners of 46 Welsh Road and 58 Welsh Road, respectively, and some level of cooperation would be necessary in order to keep the stairs and access to the stairs

passable during the winter months. Mr. Walters further stated that the proposed parking area was an appropriate site, particularly given the amount of ledge on the other side of the dwelling, that the parking area when constructed would not adversely effect the neighborhood nor cause a nuisance or hazard to pedestrians, and, in fact, would improve safety and remove the nuisance created by vehicles parked on the street, and that the retaining wall and new walkway would allow the parking area to function as intended to the benefit of the owner of 46 Welsh Road as well as the neighbors. Mr. Walters concluded by saying that the applicant had reviewed the conditions suggested by the Planning Board and had no objection to any of them.

The Board, having heard all the testimony, deliberated on the merits of the application. It was suggested that an additional condition be imposed, that no vehicles be parked in such a way as to obstruct the sidewalk. The Board then determined, by unanimous vote that the conditions of **Section 6.04.12** and **Section 9.05** of the Zoning By-Law have been satisfied for the requested relief (for the reasons recited by Mr. Walters) of the provisions of **Section 6.04.5.c.1**, **Section 6.04.5.e.2** and **Section 8.02.2** of the Zoning By-Law and that it is desirable to grant Special Permits in accordance with said Sections. The Board of Appeals 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. The driveway shall be surfaced with pavers, and the retaining wall constructed of stone or comparable quality materials.
2. Prior to the issuance of a building permit, final plans including all relevant setback dimensions and delineated parking spaces shall be submitted for review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, final plans for the retaining walls and pavers including all dimensions and materials shall be submitted for review and approval of the Assistant Director of Regulatory Planning.
4. Vehicles in the parking area shall not block the sidewalk in the area of the curb cut.
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.

RECEIVED
TOWN OF TOWNLINE
TOWN CLERK

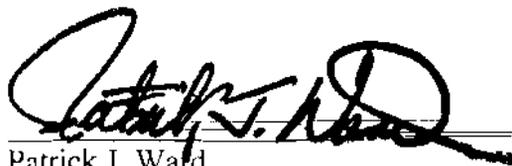
UNANIMOUS Decision of
The Board of Appeals

Filing Date: July 3, 2009



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals