



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. 090049

Petitioner, Johanna Albion, applied to the Building Commissioner for permission to construct a one car parking space in front of the existing townhouse at 38 Harrison Street. The application was denied and an appeal was taken to this Board.

On 9 July 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 27 August 2009, at 7:15 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 6 and 13 August 2009 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: **JOHANNA ALBION**

Location of Premises: **38 HARRISON ST BRKL**
Date of Hearing: **08/27/09**
Time of Hearing: **7:15p.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. 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.**
 - 6.04.14; Variance Required.**

- 2. 8.02.1.a, Alteration or Extension, Special Permit Required** of the Zoning By-Law to construct a one car parking space in front of the existing single townhouse per plans at **38 HARRISON STREET BRKL**

Said Premise located in a **T-5** (two family and attached 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, Jonathan Book and Mark Allen. The petitioner, Johanna Albion was represented by Attorney Jacob Walters, 7 Harvard Street, Brookline, MA.

Attorney Walters described the property at 38 Harrison Street as an attached two-and-a-half story single-family dwelling near the intersection with Kent Square. Attached to this dwelling is a

matching single-family dwelling with symmetrical proportions. The front of the property is landscaped with grass. Northeastern University's athletic field is directly across the street from the property. Surrounding properties include other two- and single-family dwellings, and the Lawrence School is nearby to the north.

Attorney Walters said that the petitioner, Johanna Albion, wishes to construct a one-car parking space in front of the dwelling. This would be done in conjunction with the neighboring attached dwelling at 36 Harrison Street, also a Board of Appeals case, #090048, to establish a front yard one-car parking space. Originally, the proposed space in front of 38 Harrison Street was to be 8.5 feet wide by 18 feet deep and finished with permeable pavers. The applicant has revised the proposal to try and meet the width requirements of the Zoning By-law, reducing the spaces to 7.6 feet. The proposed parking is being planned in conjunction with a new deck and stairs that would wrap around the front of the building. Attorney Walters stated that the requested relief could be granted by two Special Permits, under **Sections 6.04.12**, allowing the Board to waive parking dimensional requirements for new parking facilities being installed to serve existing structures, and **Section 8.02.1.a**, for the alteration or extension of a pre-existing non-conforming condition, in this case the side yard setback due to the proposed wrap around porch. Attorney Walters cited the unusual circumstances of the subject property and the adjoining property at 36 Harrison Street. Each lot is only 2,500 square feet and these are the only lots in the neighborhood without a driveway or access to the rear of the building. While the lots are quite small, the dwelling is large, and was constructed prior to the need for parking automobiles. Mr. Walters stated, in response to the Planning Board's concern for the loss of two on street parking spaces as a result of the proposed curb cuts, that in fact no spaces will be lost. Mr. Walters pointed out that there will be space between the curb cuts for one automobile and that the owner of the property presently has a

handicapped parking space which will no longer be used. Mr. Walters went on to say that at present the occupants of the property generally park their automobile in front of the building during the day, and rent a parking space at night. By creating on site parking, the neighborhood will have one additional space free during the day but also an additional rental space. Mr. Walters pointed out that parking in this neighborhood is at a premium. Mr. Walters added that the applicant has shared the plans for the proposed parking space with the abutters, has incorporated their suggestions into the final plans, and has the support of the neighborhood. Mr. Walters concluded by stating that grounds for the requested Special Permits meet the requirements of **Section 9.05** of the Zoning By-Law in that the site is appropriate for the desired parking spaces, and is indeed the only logical place where parking could exist, will not be detrimental to the neighborhood as the overall landscaping and screening will be an improvement to the streetscape and finally that the proposed use will not create any hazard or dangerous condition. Mr. Walters noted that while there is adequate landscaping to soften the impact of vehicles, the proposed landscaping does not impede the view of drivers backing out of the driveway. Mr. Walters urged the Board to approve the proposed parking space.

Chairman Geller asked whether anyone in attendance wished to speak in favor of or against the proposal and no one rose to speak.

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

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
- .12 – installation of parking facilities for existing structures
- .14 – parking width in excess of 24 feet or 40 percent of building façade

NEW PARKING AREA	Required	Proposed	Finding
Front Yard Setback (parking)	15 feet	0 feet	Special Permit*
Side Yard Setback (parking)	10 feet	5.7 feet	Special Permit*
Parking Area Width	7.7 feet	7.6 feet	Complies**

*Under **Section 6.04.12**, the Board of Appeals may waive parking dimensional requirements for new parking facilities being installed to serve existing structures, provided the substitution is necessary to permit the installation of some or all of the off-street parking spaces that would be required for a similar new building.

Under **Section 6.04.14, the width of a parking area facing the street must be less than 40 percent of the building's façade. In this case, the building façade is approximately 19.25 feet. The applicant has revised the plan to reduce the parking space width from 8.5 feet to 7.6 feet to meet this requirement, and to no longer require a variance.

Section 8.02.1.a – Alteration or Extension

A special permit is required to alter or extend a non-conforming condition, in this case, the minimal side yard for the porch stairs that are being altered to create a wrap around deck.

Ms. Selkoe said that the Planning Board was hesitant to support this proposal to install a front yard parking space for this single-family attached dwelling. The existing streetscape has very few front yard parking spaces now. Additionally, there is some concern that the spacing of this curb cut and the one proposed at 36 Harrison Street is rather minimal, and may remove a third on-street parking space in a neighborhood where parking is in demand. Although these concerns are substantial, Ms. Selkoe said that the site is unique and there are very few options for on-site parking. The applicant is considering extensive landscaping in the front yard to counterbalance the proposed parking space and improve the appearance of the dwelling. This landscaping should be designed in a way so as to partially screen the view of the cars from the street, while keeping adequate visibility for the driver of the vehicle to maneuver in and out of the space. The Board appreciates that the applicant has made an effort to ensure the application does not require a variance, and has revised the plan accordingly. The narrower spaces on the revised plan may allow for a more usable on-street parking space between the two drives. With these revisions and the proposed landscaping, the impact of the new parking on the streetscape is mitigated.

Finally, the Board is concerned that the proposed curb cut plan may violate accessibility regulations for handicapped access, and the applicant should ensure the plans are accurate and will meet current regulations. The applicant has indicated a willingness to examine this aspect of the proposal to ensure the curb cut will comply. Therefore, the Planning Board voted (3-1) to recommend approval of the proposal and plans, including the site plan prepared by Bruce Bradford and dated 6/16/09, the front yard plans prepared by Osborn Studio + and dated 7/26/09, and the landscape plan prepared by CBA Landscape Architects and dated 7/30/09, subject to the following conditions:

- 1. Prior to the issuance of a building permit, a final site and parking layout plan, indicating all lot lines and setbacks and maintenance of handicapped accessibility, shall be submitted to the Assistant Director for Regulatory Planning.**
- 2. Prior to issuance of a building permit, a final landscaping plan, indicating permeable pavers for the driveway and all other hardscape materials, and planting types and locations for the front of the property, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 3. No vehicle shall be parked where it overhangs the sidewalk.**
- 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. Mr. Shepard represented that the subject home was one of the largest in the neighborhood on one of the smallest lots. He said that the majority of the homes on the street have parking either to the side or the rear of the homes. He said that the subject house has very pleasing lines but has suffered from neglect in the recent past. Mr. Shepard stated that the

proposal before the Board would provide interesting detail to the home. He said that the proposal would preserve the large diameter street tree in front of the home as well as the adjacent parking space. Mr. Shepard commented that while the plan appeared fine on paper, the actual construction and quality of materials is what will make the project. Mr. Shepard said that perhaps the walkway and driveway should be constructed of dissimilar materials to avoid the appearance of an overly wide driveway. He said that the Building Department was supportive of the relief as well as the conditions proposed by the Planning Board.

The Board, having heard all the testimony, deliberated on the merits of the application. Chairman Geller asked for clarification regarding parking by the applicant on the walkway between the parking spaces for 36 and 38 Harrison Street. The Chairman also expressed concern that vehicles not overhang the sidewalk. The applicant's landscape architect, Clara Batchelder responded to the Chairman by pointing out that the porch stairs make it difficult if not impossible for vehicles to park on the walkway. Attorney Walters noted that it was a suggested condition of the Planning Board that vehicles not be allowed to overhang the sidewalk, which is also a legal requirement in Brookline, and stated further that the applicant was aware of this condition and would abide by it. Board Member Mark Allen indicated he was uncomfortable with non-conforming parking spaces and wondered what was to stop the current or future owners of the property from parking a vehicle, particularly a large vehicle, in such a way as to overhang the sidewalk. Ms. Batchelder responded that the parking spaces were close to standard length, being 18.2' (the requirement is 18.5'). Mr. Shepard indicated that the Building Department would enforce violations of the parking requirements. Board Member Jonathan Book indicated his intent to support the proposal, noting that the solution to the lack of parking was a thoughtful one and had obtained the support of the neighbors.

The Board then determined, by unanimous vote that it is desirable to grant Special Permits in accordance with Section 6.04.12, installation of parking facilities for existing structures, and Section 8.02, to alter a pre-existing, non-conforming structure and makes the following findings pursuant to Section 9.05:

- 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 the issuance of a building permit, a final site and parking layout plan, indicating all lot lines and setbacks and maintenance of handicapped accessibility, shall be submitted to the Assistant Director for Regulatory Planning.**
- 2. Prior to issuance of a building permit, a final landscaping plan, indicating permeable pavers for the driveway and all other hardscape materials, and planting types and locations for the front of the property, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
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Unanimous Decision of
The Board of Appeals



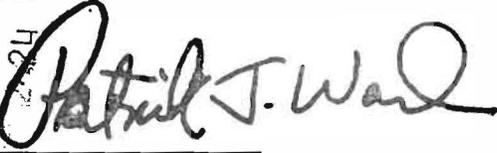
Jesse Geller, Chairman

Filing Date: September 18, 2009

A True Copy

ATTEST:

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

2009


Patrick J. Ward
Clerk, Board of Appeals

2009