



BOARD OF APPEALS
Jesse Geller, Chair
Mark G. Zuroff

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2019-0037
15 HANCOCK ROAD, BROOKLINE, MA

Petitioners, Kara and David Blackburn, applied to the Building Commissioner for permission to create parking in the front yard at 15 Hancock Road. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed July 25, 2019 at 7:00 PM., in the Select Board's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioners, to their 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 July 11, 2019 and July 18, 2019 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. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

15 HANCOCK ROAD, BROOKLINE, MA 02445 - Create parking in front yard in a(n) S-7 SINGLE-FAMILY on July 25, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Blackburn, Kara) Precinct 6

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

§6.04 - DESIGN OF ALL OFF-STREET PARKING FACILITIES

§6.04.5.A DESIGN OF ALL OFF-STREET PARKING FACILITIES

§6.04.5.C.1 – DESIGN OF ALL OFF-STREET PARKING FACILITIES

§6.04.5.D – DESIGN OF ALL OFF-STREET PARKING FACILITIES

Any additional relief the Board may find necessary.

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

The Town of Brookline does not discriminate in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer.

If you have any questions regarding this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

*Jesse Geller, Chair
Mark G. Zuroff*

Publish: 7/11 & 7/18

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Mark G. Zuroff and Board Members Lark Palermo and Randolph Meiklejohn.

Also present at the hearing were Planner Victor Panak and Deputy Building Commissioner Joseph Braga.

The case was presented by John Murphy of NatureWorks Landscape Services, Inc. Chairman Zuroff called the hearing to order at 7:00 p.m. Mr. Murphy waived the reading of the public notice.

Mr. Murphy then described the proposal stating that the Petitioners have a building permit for the parking area but want to revise the building plans to remove the need for a curb that a building inspector wanted installed in the driveway.

Chair Zuroff asked why the ZBA should grant approval. He explained that the project was looking for relief under §6.04.5.a which means that the proposed driveway does not meet setback requirements. Mr. Murphy said that the current parking area doesn't meet setbacks either. Chair Zuroff said the project is proposing a 6' rather than 20' setback and is also requesting removal of curb that is required by Building Department. He asked Joe Braga, Deputy Building Commissioner, whether the project requires counterbalancing amenities or if they are just requesting relief. Mr. Braga said they are just requesting relief and there is no requirement for counterbalancing amenities.

Chair Zuroff said the application is to request removal of the curb requirement but the curb wasn't shown in the Planning Board report. Mr. Murphy said they had been told to wait to pave curb until the appeals process is done; if appeal is denied they can put it in then. Chair Zuroff asked what their justification is for not wanting to put in the curb if the curb is a safety measure. Mr. Murphy said having a curb in the middle of a driveway where kids are playing basketball is unsafe, so they don't want to put it in. Chair Zuroff asked why the curb can't go where parking space is being relocated. Mr. Murphy said they were just following the Building Department's recommendations.

Chair Zuroff said the applicant is presenting the whole modification as being for putting a basketball court in the driveway, but it's also clearly making a 2-car driveway into 3-car driveway. The

Planning Board was concerned that it will make area look like a parking lot and that cars might be overlapping into the sidewalk area which is a safety hazard. Mr. Murphy said the previous parking spaces were tandem and that the owners only have 2 vehicles; it is better to have them park side-by-side than tandem.

The Board asked if any trees of any size are being removed. Mr. Murphy said no trees being removed, but that some other landscaping is being done.

Applicant Dave Blackburn gave a summary of why they want the relief. They've had 2 cars for the past 10 years and don't plan on getting more cars, so they don't care about a 3rd parking space. They are interested in changing driveway because 1) they want more space where they park so that the car doors don't bang against walls when being opened and 2) kids play basketball and as traffic on street increases, they want a basketball hoop in the driveway rather than on street. They are not taking down any trees or changing the curb cut or doing anything to the sidewalk, they have simply expanded the driveway a little bit.

Board Member Palermo asked Mr. Blackburn to show her where on plans the basketball hoop would go and where the current impediment to opening doors is. Chair Zuroff noted that the Board had been given pictures that show that the driveway has already been expanded and that Mr. Blackburn is now just asking for permission to do what has already been done.

Mr. Blackburn said that he had understood that they could expand the driveway with the condition that there would be a curb going down the middle of the driveway. Chair Zuroff said that they will address the curb soon, but first he wants to confirm that they are trying to get approval for something that has already been done. Board Member Palermo asked if the Building Department was fine with the relief they are seeking. Chair Zuroff also wanted to hear from the Building Department.

Rosanne Stein (17 Hancock Road) asked if she could speak. She said that the applicant currently parks two cars staggered with second car overhanging onto the sidewalk. While the expanded parking area will allow the two cars to park side by side, the second car might still need to back up over the sidewalk. Ms. Stein objected to having any cars overlapping with the sidewalk, and she doesn't want there to be a third parking space.

Mr. Blackburn said it is not the intent of the project to get a third parking space and by parking side by side instead of tandem the cars never need to overlap with the sidewalk. Board Member Meiklejohn asked if they are able to maneuver both cars out of the driveway using the curb cut and not going over the sidewalk.

Chair Zuroff then called upon Joseph Braga to deliver the comments of the Building Department. Mr. Braga confirmed that the applicant is coming for relief after having already built the driveway. Mr. Braga said he had no objection to the relief being sought, and that the curb had been required for a different design but that the current design is fine without a curb.

Chair Zuroff said he does not like when applicants ask to legalize a project after it's been constructed. Mr. Blackburn said he didn't know they needed a permit or any zoning relief.

Board Member Meiklejohn asked if the By-law prohibits 3 cars from parking in a front driveway and if the Board can condition the Special Permit to prevent 3 parking spaces. Chair Zuroff said the parking setback is in the By-law.

Chairman Zuroff then called upon Victor Panak, Planner, to deliver the findings of the Planning Board. Mr. Panak noted the following:

Findings

The proposed plan fails to comply with the following sections of the Zoning Bylaw:

Section 6.04.5.a – “In all districts, parking stalls in parking lots shall be set back from the street lot line, a minimum of five feet and further to whatever extent may be necessary in the specific situation, as determined by the Building Commission, to avoid the probability of cars backing or otherwise maneuvering on the sidewalk upon entering or leaving the stalls.”

Section 6.04.5.c.1 – In S districts, the surfaced area of parking lots must be set back from the front lot line “the distance specified for building setback under Table 5.01, or the average of the setbacks of the buildings on the adjacent lots on either side, as calculated in §5.54, whichever is greater”.

Relevant section of Table 5.01:

	Required	Proposed	Finding
Front Yard Setback	20 feet	6 feet	Special Permit*

Section 6.04.5.D – “In all districts, curbs shall be provided to prevent motor vehicles from being parked within required setback areas, or beyond the boundaries of the lot where no setback is required.

Planning Board Comments

The Planning Board reviewed the revised plans (showing the elimination of one of the tandem spaces) submitted by the applicant at their meeting on June 27, 2019. The Planning Board was disappointed to find that the hardscaping and landscaping work shown on the plans were already complete, but found the proposal generally acceptable. The applicant had received a building permit to widen the driveway for a “basketball court” and was told if the plan were not approved, curbing should be installed down the middle of the driveway to prevent an additional car from being parked there.

Therefore, the Planning Board recommends approval of the Parking Layout Plan by Sean Reardon dated June 19, 2019 subject to the following conditions:

- 1. Prior to the issuance of a Building Permit, the applicant shall submit a final parking lay-out plan subject to the review and approval of the Assistant Director of Regulatory Planning.*
- 2. Prior to the 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: a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final parking lay-out plan stamped and signed by a registered architect or engineer; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.*

Board Member Palermo proposed that they add a condition limiting the number of cars that can be parked there. Chair Zuroff supported that condition, with the additional requirement that cars are not parked within the setback; just because the driveway violates the setback doesn't mean that cars should be able to violate it.

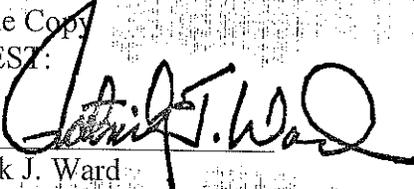
The ZBA members voted unanimously to approve the special permit relief per the Parking Layout Plan by Sean Reardon dated June 19, 2019 subject to the following conditions:

- 1. Prior to the issuance of a Building Permit, the applicant shall submit a final parking lay-out plan subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2. Prior to the 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: a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final parking lay-out plan stamped and signed by a registered architect or engineer; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**
- 3. No more than two vehicles shall be parked in the parking area and no portion of any vehicle shall be parked further into the required setback area than shown on the approved plans.**

Unanimous Decision of
The Board of Appeals

Filing Date: 8/12/19

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals


Mark G. Zuroff, Chair