

**CITY OF WALTHAM**

**BOARD OF APPEALS**

PETITION OF )  
 )  
DAVID HESSION )  
 )  
For Variances from the Requirements )  
of the Zoning Ordinance )

CASE NO. 2020-25

**SUPPLEMENTAL MEMORANDUM**

Now come the Petitioner in the above entitled matter and submits this Supplemental Memorandum to clarify and supplement information regarding certain questions which arose during the public hearing on September 22, 2020.

The Petition is a request for variances from the provisions of Article V, Sections 5.31, 5.32, 5.34 and 5.35 of the Ordinance all of which relate to parking. Variances from these provisions would allow for the creation of one parking space in the front yard of the property at 36-38 Oak Street. Currently there is no driveway, no on-site parking and no area within the lot where a conforming parking space could be provided, thus necessitating the need for zoning relief.

If the variances are granted, the Petitioner would then need a curb cut from the Board of Survey and Planning to access the parking space. To clarify, the Petitioner is not requesting a curb cut from the Zoning Board, but rather is asking for dimensional variances which would allow the creation of a single parking space.

If the variances are granted, the Petitioner would then also need a curb cut from the Board of Survey to access the parking space. The Board of Survey has determined that the requirements for granting a curb cut would be met if the variances are granted. A copy of the letter from the Board of Survey is attached as Exhibit 1.

The four requested variances all relate to the size and location of the parking space.

The plot plan shows that there is no place on the lot where a conforming parking space could be located. Although there is open space in the rear yard, there is no access to this area as the side yards are only 4.1 and 4.3 feet wide, not nearly enough for a car to pass through.

The house was built some time before 1929 likely before the first zoning ordinance was passed in Waltham in 1925. The only entry on the Building card (Exhibit 2) is a notation that a permit for an addition to the house was granted in 1929. Prior to the adoption of the Ordinance, there would have been no requirement for on-site parking. The house is legally non-conforming but its location on the lot leaves no room for the addition of a conforming parking space.

Parking is and has always been allowed on Oak Street. In 1929 and prior to 1929, the number of cars parking on the street was far fewer and residents could find parking.

Now, in part because more people have cars and in part because of the number of multi-family dwellings that have been built and re-built in the neighborhood, the neighborhood has become more congested and parking is difficult. It is often impossible to find parking anywhere near the property. The pictures submitted at the hearing show some of these conditions.

The conditions have changed since the house was built and even more so in the past few years. The Petitioner would like to make an increasingly difficult situation a little better and safer by adding parking on the Property. There is only room for one space anywhere on the lot and that is at the front of the lot on the easterly side. (There is a fire hydrant in front of the house on the westerly side which would prevent parking in this area).

Even in the only possible location, a conforming parking space cannot be built without zoning relief from the provisions of Section 5.3 (Design of parking areas).

Only 15 feet is available between the house and the street line. This is enough to fit a car, but not enough to meet the requirements of:

Section 5.32 which requires a five-foot space between the house and the parking space;  
Section 5.34 which requires that a space be 18 feet long; and  
Section 5.35 which prevents parking in the front yard between the house and the street line.

Initially the Petitioner also requested a variance from the provisions of Section 5.31 which requires that parking spaces be covered with a hard surface (paved). The Petitioner initially sought to use crushed stone rather than a hard surface.

The Petitioner has since changed his mind on this matter and now proposes to comply with the Ordinance in this regard and to cover the surface with concrete or hot-top, either of which are permitted under Section 5.31. Therefore this variance is no longer needed.

Accompanying this Memorandum is a Motion to Amend the Petition to delete the request for a variance from Section 5.31. In place of the request for a variance from Section 5.31 the Petitioner has added a condition to the proposed Decision that would require that the parking surface be covered with concrete or hot-top.

The location of the proposed parking space is the only possible location, and the proposed dimensions are the only dimensions possible.

For the reasons presented in the prior hearing and supplemented in this Memorandum, it is the legally non-conforming conditions on the lot in the location of the 90+ year old house and the changed circumstances in the neighborhood which now cause hardship to the Petitioner (and to any owner of the Property).

Further, the changes to development in the neighborhood have created a shortage of parking and removing even one car from the street by creating one on-site space will be a benefit and not a detriment to the neighborhood.

Finally, granting the relief will be in keeping with the intent and purpose of the Ordinance because it is designed to provide for unusual situations. In this case changes have occurred since the house was built over 90 years ago and through no fault of the Petitioner, and by permitting variances the Ordinance provides an avenue of relief to deal with such changing and adverse conditions.

Therefore, the Petitioner asks that the Petition, as amended, be granted.

Dated: October , 2020

Respectfully submitted,

DAVID HESSION,  
Petitioner



**CITY OF WALTHAM  
MASSACHUSETTS**

Michael L. J. Chiasson,  
Director of Public Works

Clerk, Board of Survey and Planning

September 25, 2020

Ms. Barbara Rando, Chairwoman  
Zoning Board of Appeals  
119 School Street  
Waltham, MA 02452

RE: 36-38 Oak Street

Dear Ms. Rando,

Regarding the above address, should the application receive a variance for zoning code Sec. 5.32, "No such paved area shall be placed within five feet of the front of any building excluding garages, said area being reserved for landscaping treatments and access" a curb cut would be granted.

C.P.W. is responsible for approving curb cuts less than 20-feet wide.

Attached is the curb cut denial dated June 1, 2020.

Sincerely,

Michael L.J. Chiasson, Director  
Consolidated Public Works



**CITY OF WALTHAM  
MASSACHUSETTS**

Michael L. J. Ghasson,  
Director of Public Works

Clerk, Board of Survey and Planning

June 1, 2020

Mr. David Hesslon  
36-38 Oak Street  
Waltham, MA 02453

RE: Request for 20-foot driveway opening at 36-38 Oak Street

Dear Mr. Hesslon,

Please be advised your curb cut application for 36-38 Oak Street that you submitted on May 19, 2020 has been denied at this time. The proposed curb as shown on the plan is not in compliance Zoning Code Sec. 5.32, "No such paved parking area shall be placed within five feet of the front of any building excluding garages, said area being reserved for landscaping treatments and access."

I can be reached at 781-314-3800 should you have any questions.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Michael L. J. Ghasson", is written over a horizontal line.

Michael L. J. Ghasson, Director  
Consolidated Public Works

Cc: File- 36-38 Oak Street  
Jack O'Brien Code Enforcer Officer  
Engineering Department  
Building Department

LOT NO

DATE	OWNER	PROPOSED WORK	AMOUNT	PLAN NO.
5.29.29	Joseph Lucchese	Small add. to house	per \$206	\$200

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**MOTION TO AMEND PETITION**

Now come the Petitioner in the above entitled matter and requests that this Board allow him to amend the petition by deleting the request for a variance from the provisions of Article V, Section 5.31.

Article V, Section 5.31 would have allowed the Petitioner to cover the parking space with crushed stone rather than one of the hard surfaces required in Section 5.31.

The Petitioner no longer seeks to cover the surface with crushed stone but rather will surface the proposed parking space with concrete or hot-top (as permitted in Section 5.31) and therefore this variance is no longer needed.

Petitioner requests that the description of the parking surface identified on the plan be amended by deleting the reference to "Proposed Crushed Stone" and replacing it with "Proposed concrete or hot-top".

Further, in the proposed Decision, the Petitioner has included a condition requiring the space to be covered with concrete or hot-top.

Respectfully submitted,

Dated: October , 2020

By: \_\_\_\_\_  
DAVID HESSION

**CITY OF WALTHAM**  
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**PROPOSED FINDINGS OF FACT**

The Board of Appeals of the City of Waltham makes the following Findings of Fact after hearing on the above-captioned Amended Petition for Variances:

1. This Board of Appeals having met all legal prerequisites by proper publications and posting as provided in Massachusetts General Laws, Chapter 40A, Section 11, and having also notified by mail all parties in interest and having heard all the evidence is now empowered to exercise the power to grant or deny the variances sought by the Petitioner;
2. The locus is known as and numbered 36-38 Oak Street and is located in a Residence B Zoning District;
3. The requested variances are from the provisions of Article V, Sections 5.32, 5.34 and 5.35, all of which relate to the design of parking spaces;
4. The requested variances are dimensional in nature and as such this Board has both the power and the authority under M.G. L. c.40A, Sections 10 and 14 and under the Zoning Ordinance of the City of Waltham, Article 7, Section 7.2 and 7.3, to grant them;
5. The property is a two-family residential structure built some time before 1929 and likely prior to the adoption of a Zoning Ordinance in Waltham;
6. The Petitioner purchased the Property in 2017 and the deed is recorded in Book 70602, Page 77;



7. The house covers much of the width of the 3,900 square foot lot, leaving side yards of only 4.1 and 4.3 feet on the sides;
8. There are no on-site parking spaces on the Property;
9. Although there is open space in the rear of the lot, a car could not access this area because the side yards are not wide enough;
10. Because of the placement of the house, there is no place on the lot for a driveway and no place where even one conforming parking space could be located without zoning relief;
11. Because of the placement of the house, there is only one place on the lot where only one parking space could be located and that is in front of the house on the easterly side (as there is a fire hydrant in front on the westerly side);
12. Even in this location, parking design requirements which came into effect after the house was built, cannot be met without zoning relief;
13. These conditions are unique in the neighborhood and have become legally non-conforming as a result of changes in the Zoning Ordinance;
14. None of these conditions were created by the Petitioner;
15. The lack of any on-site parking spaces causes hardship to the Petitioner (and would to any owner of the Property) as the number of available street parking spaces has been consistently reduced as a result of changing times and an increase in the number of multi-family dwellings in the neighborhood and not being able to park close to the house is a safety concern;
16. The allowance of variances to create one parking space in the front yard would not be detrimental to the neighborhood as many properties have cars which park in driveways which extend into the front yard as shown on the pictures submitted as Exhibits;
17. The removal of even one car off the street will be a benefit, rather than a detriment, to the neighborhood;
18. The Ordinance would not be nullified by the grant of the variances because adding one on-site parking space will make the Property more conforming in this regard and the dimensional deviations result from changes in the zoning requirements and conditions in the neighborhood which have drastically changed since the house was first created over 90 years ago and the relief requested, which is necessitated by the existing legally non-conforming conditions, is the mechanism provided in the Ordinance by which relief can be provided to a property owner.

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**PROPOSED DECISION**

Therefore, the Board of Appeals of the City of Waltham, after due deliberation, voted:

To grant the variances requested in Case No. 2020-25, as amended, and, based upon the adopted Findings of Fact which are attached hereto as part of this Decision, and incorporated herein by reference, cites as reasons the following:

That there are circumstances especially affecting this locus, but not generally affecting the Residence B Zoning District in which it is located, in that the Property, which is a two-family residential structure, was built some time before 1929 and likely prior to the adoption of a zoning Ordinance in Waltham, without any driveway or on-site parking spaces; and the house covers much of the width of the 3,900 square foot lot, leaving side yards of only 4.1 and 4.3 feet and therefore this placement of the house on the lot leaves no room for a driveway on either side of the house and no space for vehicle access to the rear of the Property; and

A literal enforcement of the Zoning Ordinance would involve a substantial hardship both financial and practical because the parking design requirements which came into effect after the house was built now prevent any conforming parking spaces from being created, which causes hardship which is made worse by a shortage of street parking spaces resulting in part from other development in the neighborhood; and

The Petition may be granted without substantial detriment to the public good, in that the several other properties park cars in driveways which extend into the front yard of properties and the addition of even one on-site parking space in this neighborhood will be a benefit rather than a detriment; and

The granting of the variances will neither nullify nor substantially derogate from either the intent or purpose of the Ordinance because adding one on-site parking space will make the Property more conforming in one aspect and the Ordinance, by allowing variances, provides and authorizes a mechanism for relief where there are conditions which affect a particular property which in this case are caused by the 90+ year old house, changes in the zoning requirements and changes in the neighborhood.

The granting of these variances is subject to the following conditions:

1. Any and all necessary permits shall be issued within one (1) year of the date of the filing of this decision with the City Clerk of Waltham all work shall be completed within two (2) years of said filing date;
2. The parking space shall be paved with concrete or hot-top in compliance with the Ordinance and shall not be covered with crushed stone; and
3. All use of the property shall be in accordance with the following plan introduced as evidence during the hearing:  
"36-38 Oak Street Waltham, Massachusetts Proposed Plan", dated June 5, 2020, prepared by Peter Nolan & Associates, LLC, Land Surveyors/Civil Engineering Consultants, except as modified by the Motion to Amend the Petition and by condition #2 above.