



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

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Patrick J. Ward, Secretary

**TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2314D/070014**

Petitioner, Eugene Fierman, applied to the Board of Appeals to modify an existing Special Permit, case number 2314-C, to allow the use of a home office at 169 Clark Road for an additional 10 years.

On March 1, 2007 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 originally fixed April 19, 2007, at 7:15 p.m. in the Selectmen's Hearing room on the sixth floor of the Town Hall, as the time and place of a hearing on the appeal. Notice of the scheduled 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 March 29, and April 5, 2007, 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: **Eugene Fierman**

Location of Premises: **169 CLARK RD BRKL**

Date of Hearing: **04/19/2007**

Time of Hearing: **7:15 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6th. Floor**

A public hearing will be held for a variance and/or special permit from: **Modification of a Board of Appeal Case #2314-C dated April 7, 1997**, of the Zoning By-Law to allow home office use for another (10) years at **169 CLARK RD BRKL**.

Said Premise located in a **S-7** district.

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 Chair, Diane Gordon and Board members Harry Miller and Bailey Silbert. Dr. Fierman, the homeowner, presented the case before the Board.

The subject property is located on Clark Road in a residential neighborhood comprised primarily of single-family dwellings. On the property is a two-and-a-half story single-family dwelling with a driveway on the right side leading to a parking area at the rear. About 300 s.f. of the basement is used as a psychiatrist's office and waiting area, operated by the Dr. Fierman. The entrance to the office is at the rear of the house. Dr. Fierman stated that he appeared before the Board of Appeals in 1979 to establish a psychiatrist's office within his primary residence, and he has appeared three times since then to allow him to continue to maintain the office due to a time limit attached to the original decision.

He is now returning to the Board of Appeals to request that condition #3 of BOA Case #2314C be modified again to allow him to use his home psychiatrist's office for an additional 10 years. He intends to conduct a limited practice of 10 to 12 hours per week, between 7 a.m. and 10 p.m. weekdays and occasionally on Saturday mornings. The applicant has stated that there will be no employees or group practice on the premises.

The Chair asked if anyone wished to speak in favor or opposition to the proposal and no-one responded. Dr. Fierman submitted the signatures of seven neighbors in support of his request for an extension.

Ms. Polly Selkoe, Assistant Director for Regulatory Planning, stated that the Planning Board supports the application to modify the previous special permit decision to enable the applicant to continue to operate a psychiatrist's office within his principal residence. The applicant has conducted a limited practice from his home for 27 years without incident or complaint, and the continued use of the basement as such will not have an adverse affect on the neighborhood. However, in order to ensure the home office is operated in compliance with the Board of Appeals conditions in case the property is sold and occupied by another resident physician, a time restriction of 10 years should remain in place.

Ms. Selkoe said that the Planning Board recommends approval of the modification, subject to the following conditions:

- 1. The doctor's office hours shall be between 7:00 a.m. and 10:00 p.m.**
- 2. The doctor shall have no employees in connection with this accessory use.**
- 3. This relief shall expire ten years from the date of the Board of Appeals decision, unless this Board shall vote to extend the same.**

4. **At no time shall the office space be used or occupied by anyone other than a psychiatrist.**
5. **There shall be no group therapy sessions.**
6. **Applicant will not knowingly permit visitation to the office by clients who can reasonably be expected to present a threat of criminal or violent activity to the surrounding neighborhood.**
7. **The applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

The Chair then called on Mr. Frank Hitchcock, speaking on the behalf of the Building Department. Mr. Hitchcock stated that the Building Department had no objection to the extension of the special permit or to the conditions recommended by the Planning Board.

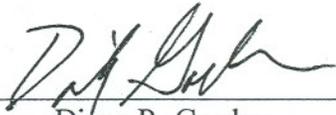
The Board, having deliberated on this matter and considered the foregoing testimony, concludes that the modification continuing the special permit for a home office initially granted in case #2314 and further modified as to time under cases 2314A, B and C is appropriate and makes the following findings 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.
- 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 votes unanimously to grant the requested modification subject to the following conditions:

- 1 The doctor's office hours shall be between 7:00 a.m. and 10:00 p.m.
- 2 The doctor shall have no employees in connection with this accessory use.
- 3 This relief shall expire ten years from the date of the Board of Appeals decision, unless this Board shall vote to extend the same.
- 4 At no time shall the office space be used or occupied by anyone other than a psychiatrist.
- 5 There shall be no group therapy sessions.
- 6 Applicant will not knowingly permit visitation to the office by clients who can reasonably be expected to present a threat of criminal or violent activity to the surrounding neighborhood.
- 7 The applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

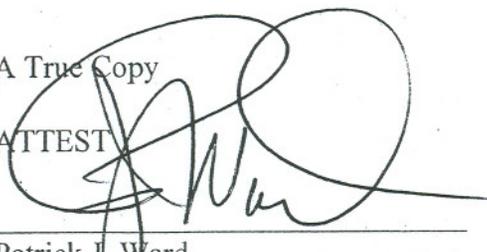


Diane R. Gordon

Filing Date: April 27, 2007

A True Copy

ATTEST



Patrick J. Ward
Clerk, Board of Appeals