



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. BOA05007

Petitioner Marcus Gordon applied to the Building Commissioner for permission to install a fence 8' in height along Boylston Street in front of the vacant lot adjacent to 1101 Boylston Street. The application was denied and an appeal was taken to the Board of Appeals.

On February 16, 2006, the Board of Appeals 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. The Board then fixed March 16, 2006, at 7:15 p.m. in the Selectman's Hearing Room on the sixth floor of the Town Hall as the time and place of a hearing on the approval. Notice of the hearing was mailed to the Petitioner, and 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 2, 2006 and March 9, 2006 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice 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: **MAYDAL, LC**

Location of Premises: **1101 BOYLSTON ST BRKL**

Date of Hearing: **03/16/2006**

Time of Hearing: **07:15 p.m.**

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

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

- 1) **5.52: Fences and Terraces in Front Yards; Variance Required.**

Of the Zoning By-Law to install an eight foot wood fence per plans

at **1101 BOYLSTON ST BRKL**

Said Premise located in a

S-10 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.

Diane R. Gordon

Harry Miller

Bailey S. Silbert

At the time and place specified in the notice, a public hearing was held by this Board.

Present at the hearing were Board members Diane R. Gordon, Harry Miller, and Bailey

Silbert.

Mr. Gordon presented the petitioners' case. He explained that the proposed 8' fence would be located on the Boylston Street side of the vacant lot adjacent to his dwelling which is also owned by the petitioner. The uphill grade going from Boylston Street to the property makes a 6 foot fence inadequate in terms of buffering the noise and debris from Boylston Street (Route 9).

In addition, Mr. Gordon pointed out that an eight foot fence would more closely match the height of the fence in front of 1101 Boylston Street which has a six foot fence constructed atop a four foot stone wall. Photographs of the neighboring properties on Boylston Street were presented displaying that they all have either an eight foot fence or stone wall/fence combination that exceeds eight feet.

The Chair then called Tim Greenhill of the Brookline Planning Department to present the Planning Board report. Mr. Greenhill stated that the Planning Board recommends approval of the requested variance with the following conditions. 1) Prior to obtaining a building permit, the applicant shall receive a certificate of Appropriateness from the Preservation Commission for approval to construct a fence and for approval of the design and materials of the fence and gate. 2) Prior to obtaining a building permit the applicant shall submit a final fence plan, including materials and design to the Chief Planner for review and approval for conformance to the certificate of Appropriateness and the Board of Appeals decision.

Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner. He restated the section of the Zoning By-Law under which relief is needed and stated that the requested relief required a variance. Mr. Hitchcock stated that due to the similar fence lines on surrounding properties and the unique topography of the site the Building Department has no objections to the requested relief.

The Board, having deliberated on this matter and having considered the foregoing testimony, voted unanimously to grant the variance from Section 5.52 and allow for the construction of an eight foot fence. The Board noted that adjacent properties had fences that exceeded the permitted six foot and that the subject property was impacted by light, debris and noise from vehicles traversing Boylston Street, which is a major commuter thoroughfare known as Route 9, and generates a significant amount of traffic both day and night. The Board found that due to the sites unique topography the variance could be granted subject to the following conditions:

- 1) Prior to obtaining a building permit, the applicant shall receive a Certificate of Appropriateness form the Preservation Commission for approval to construct a fence and for approval of the design and materials of the fence and gate
- 2) Prior to obtaining a building permit the applicant shall submit a final fence plan, including materials and design to the Chief Planner for review and approval for conformance to the Certificate of Appropriateness and the Board of Appeals decision.

Unanimous Decision of
the Board of Appeals

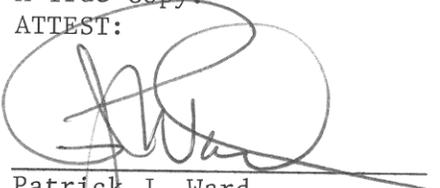


Diane R. Gordon, Chair

Date of Filing: April 12, 2006

A True Copy:

ATTEST:



Patrick J. Ward
Board of Appeals

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