



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

# *Town of Brookline*

## *Massachusetts*

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2210 Fax (617) 730-2248  
**Patrick J. Ward, Secretary**

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. BOA 060023

Petitioners, Marianne Hessner and Albert Sokol, owners of 175-177 Fuller Street, applied to the Building Commissioner for permission to construct a third floor roof deck above an existing 2-story addition at the rear of their home. The application was denied as the structure is currently non-conforming and the proposed roof deck violated the permitted side and rear yard setbacks regulations as established in the Zoning Bylaw. The Applicant appealed the decision of the Building Department.

On April 20, 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 June 1, 2006, at 7:00 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 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 May 11, 2006 and May 18, 2006, in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

LEGAL NOTICE  
TOWN OF BROOKLINE  
MASSACHUSETTS  
BOARD OF APPEALS  
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: SOKOL ALBERT L & HESSNER MARIANNE J  
Location of Premises: 177 FULLER ST BRKL  
Date of Hearing: 06/01/2006  
Time of Hearing: 7:00 p.m.  
Place of Hearing: Selectmen's Hearing Room, 6<sup>th</sup>. Floor

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

- 5.43: Exceptions to Yard and Setback Regulations; Special Permit Required
- 5.60: Side Yard Requirements; Variance Required
- 5.62: Fences and Terraces in Side Yards; Variance Required
- 5.70 Rear Yard Requirements; Variance Required
- 5.74 Fences and Terraces in Rear Yards; Variance Required
- 8.02.2: Alterations or Extensions; Special Permit Required

of the Zoning By-Law to construct a third level sundeck per plans

At 177 FULLER ST BRKL

Said Premise located in a T-5 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, a public hearing was held by this Board. Present at the hearing were Board members Diane Gordon, Chair, Bailey Silbert and Enid Starr.

Mr. Edrick vanBeuzekom, AIA, Architect with EvB Design of Somerville representing the Petitioners, presented the petitioners' case. Mr. vanBeuzekom presented to the board floor plans and elevations and photos of the existing and proposed conditions. He explained that the petitioners were requesting zoning relief on the basis that 1) the proposed roof deck would give them much needed usable outdoor open space as an alternative to their small yard which is shared with the rental unit on the first floor of the structure; 2) the scale and character of the proposed roof deck is consistent with the district, in compliance with height requirements and consistent with an urban setting; 3) the side yard and rear yard setback violation is a continuation of an existing non-conformity and 4) the orientation of the proposed deck is such that it faces a large open area of the lot behind them on Naples Road, and due to the configuration of the land and the orientation of the addition it would have minimal impact on abutters' property. Mr. vanBeuzekom presented a series of neighborhood photos to demonstrate his points. He then explained that the proposal being presented at this hearing showed a variation from the submittal to the Planning Board. The changes included solid corners at the deck railing system, clad with siding to match the house, and raised lattice sections above the corners in order to reduce sight lines into neighboring properties. These changes were made in response to the concerns raised by the abutter at 122 Naples Road over loss of privacy by the addition of the proposed deck.

Mr. Albert Sokol, owner and petitioner, stated that he had spoken with several of his abutters and that only one had expressed any objection to his proposed plans. He noted that he had spoken with the abutters, Marc Foster and Andrea Roberts of 122 Naples Road, and sent them drawings of the proposal with an offer to discuss any changes the abutter might desire in order to gain their approval. The abutters did not respond prior to the Planning Board hearing on May 11, 2006. After the hearing at which Andrea Roberts spoke, Mr. Sokol and Ms. Hessner requested their architect, EvB Design, draw an alternative to the deck design which would address the abutters' concerns. On May 31 Mr. Sokol and Marc Foster had a discussion with no resolution to Mr. Foster's objections. Mr. Sokol also explained that he and his wife had previously done extensive improvements to the landscaping of their small rear yard which enhanced the privacy screening between their yard and the abutters. He also mentioned that they

are also in the process of renovating their home with all new cedar shingle siding and new windows, which will further enhance the appearance of the house for the abutters' property.

The Chair then asked the public if anyone was present to speak for or against the requested variances and special permits. Abutter Marc Foster of 122 Naples Road presented his case against the proposed deck. He described the petitioner and his family as good, quiet and respectful neighbors. Mr. Foster presented photos showing the proximity and orientation of their yard to the subject property. He described the petitioner's house as being very close to the rear lot line and consequently having an imposing presence over his own yard and home. Mr. Foster stated that he has no problem with the design of the proposed roof deck and that he and his wife prefer the deck railing design originally submitted to the alternative one presented at this hearing. Mr. Foster explained that he is concerned about the loss of privacy both in terms of views and potential noise. He suggested a compromise solution might be for the petitioners to pay for a large tree to be planted in Mr. Foster's yard to screen his views of the proposed deck.

Mr. Sokol responded by explaining he did not want to agree to this condition as it would be difficult to negotiate the size, placement and maintenance of the proposed tree. He also pointed out that such a tree would adversely impact his own rear yard which is currently a sunny garden as well as obstruct views and light from windows in the rear of the existing house and further that they have recently planted several trees and shrubs near the Foster/ Roberts house.

The Chair then called upon Tim Greenhill of the Brookline Planning Department to present the Planning Board report. Mr. Greenhill stated that the Planning Board noted that the requested zoning relief as the proposed additions can be granted under special permit, the rear addition will not be visible from the street and privacy issues with the properties at the rear may be reduced though the use of screening or planting, and the roof deck is consistent with the urban character of the neighborhood. The Planning Board recommends approval of the submitted application with the following conditions: 1) The Applicant shall submit a landscaping plan for review and approval of the Chief Planner of the Planning and Community Development Department. 2) Prior to obtaining a building permit, the Applicant shall submit to the Chief Planner of the Planning and Community Development Department, for review and approval for conformance to the Board of Appeals decision: a) final site building elevations, stamped and

signed by a registered architect; b) a final site plan stamped and signed by a registered architect or land surveyor.

Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner. He restated the sections of the Zoning By-Law under which relief is needed and stated that all requested relief could be granted by Special Permit. Mr. Hitchcock stated that 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 special permits under Sections 5.43 and 8.02.2 and allow for the proposed roof deck, with the following conditions:

- 1) Prior to obtaining a building permit, the Applicant shall make a good faith effort to reach an agreement with the abutters at 122 Naples Road on the final design of the proposed deck and shall submit a landscaping plan showing counterbalancing amenities for the review and approval of the Chief Planner of the Planning and Community Development Department.
- 2) Prior to obtaining a building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: 1) a final site plan showing dimensions stamped and signed by a registered architect or land surveyor 2) final building plans for the rear and side elevations and 3) a recorded copy of the Board of Appeals decision.

Unanimous Decision of  
the Board of Appeals

Date of Filing: July 6, 2006

A TRUE COPY:

ATTEST:



Patrick J. Ward  
Board of Appeals



Diane Gordon, Chair