



**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Christopher Hussey  
Jonathan Book

# *Town of Brookline*

## *Massachusetts*

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043  
**Patrick J. Ward, Clerk**

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2014-0073  
OWNER: MARIELA & DAVID KOENIG

Petitioners, Mariela and David Koenig, applied to the Building Commissioner for permission to install an eight foot high fence at the front of the lot and reconfigure the off-street parking area at 77 Norfolk 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals, and fixed January 8, 2015 at 7:30 p.m. in the Selectmen's hearing room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, 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 December 18, 2014 and December 25, 2014 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:

**77 NORFOLK RD – INSTALL AN EIGHT FOOT HIGH FENCE IN FRONT YARD; PROVIDE PARKING IN FRONT YARD in an S-10, Single-Family Residential District, on January 8, 2015, at 7:30 PM in the 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner: KOENIG DAVID & MARIELA; Owner: KOENIG DAVID & MARIELA)**

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

- 1. Section 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.52: Fences and Terraces in the Front Yard**
- 3. Section 6.04.5.c.1 and 2: Design of All Off-Street Parking Facilities**

*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](http://www.brooklinema.gov).*

*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 Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at [rsneirson@brooklinema.gov](mailto:rsneirson@brooklinema.gov).***

*Jesse Geller, Chair  
Christopher Hussey  
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**Publish: December 18, 2014 & December 25, 2014**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Board Chairman Jesse Geller, and Board Members Avi Liss and Mark Zuroff.

Property owners, Mariela and David Koenig, presented the details of the proposal to the Board.

Ms. Koenig described 77 Norfolk Road as a corner lot located at the intersection of Boylston Street (Route 9) and Norfolk Road. The property currently includes a 6 foot high fence along Boylston Street that is in disrepair, and off-street parking located in the front-yard facing

Norfolk Road. The current 576 square foot off-street parking area requires tandem parking for more than two vehicles, and can accommodate up to four vehicles. The neighborhood consists of similarly sized single-family homes. The majority of neighborhood structures that front onto Boylston Street utilize fencing and vegetation as a screen from vehicular activity and debris from Boylston Street.

Ms. Koenig stated that she is proposing to replace the existing 6 foot high fence that faces Boylston Street with an 8 foot high cedar board fence. The fence height and material are intended to match the fence located along the abutting property at 1101 Boylston Street in an effort to maintain streetscape consistency. The new fence will be set back 25 feet from the intersection at the corner of the lot to avoid obstruction of pedestrian and driver sight lines. This intersection setback results in the fence cutting across the southeast corner of the lot for approximately 32 feet.

Ms. Koenig stated that she also intends to install a 3½ foot high picket fence along Norfolk Road. This fence will have posts every 8 feet and provides breaks for an existing walkway and the off-street parking area.

Ms. Koenig lastly described the proposed reconfiguration of the existing off-street parking area. The parking surface will be expanded by 790 square feet for a total coverage area of 1,366 square feet. Three 8'x18' angled parking spaces will be included to eliminate the need for tandem parking in the front yard. The existing curb cut will not be altered in any way.

Board Chairman Jesse Geller requested a description of the proposed counterbalancing amenities pursuant to **Section 5.43** of the Zoning By-Law, specifically related to yard setback relief as requested. Mr. Koenig stated that landscape features will be installed near proposed fences and the expanded parking area.

Mr. Geller also requested that the applicant describe why the proposed 8 foot tall fence meets the requirements for a zoning variance as outlined in M.G.L. c. 40a, Section 10.

Ms. Koenig restated the fact that her home is located approximately 20' from Boylston Street. Debris, noise, and lights are common and the existing front-yard fence and vegetation are not adequate in reducing these nuisances. Ms. Koenig stated that the property slopes up from Route 9 so the standard 6 foot tall fence is inadequate for this location. Ms. Koenig concluded her comments by stating that the proposed fence provides additional safety for her children who frequently play in the yard.

Mr. Geller called for public comment in favor of, or in opposition to the applicant's proposal. No members of the public wished to comment.

Mr. Geller called upon Jay Rosa (Zoning Coordinator) to deliver the comments of the Planning Board:

**FINDINGS**

**Section 5.43 – Exceptions to Yard Setback and Setback Regulations**

**Section 6.04.5.c.1 and 2 – Design of All Off-Street Parking Facilities**

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Front Yard Setback</b>	20'	0'	0'	Special Permit*
<b>Side Yard Parking</b>	5'	8'	6'	Complies

\*Under *Section 5.43*, the Board of Appeals may waive setback requirements if counterbalancing amenities are provided

**Section 5.52 – Fences and Terraces in the Front Yard**

A variance is required to install a front yard fence that is over 6 feet high above the natural grade.

Mr. Rosa stated that Planning Board was supportive of the proposed fence alteration and installation. The 8 foot tall fence is identical in height and design to the adjacent property (1101

Boylston Street) so continuing the fence would result in a visually consistent streetscape. In the 1101 Boylston Street case, a variance was granted based on the condition of the lot being uphill from Boylston Street and adjacent to a busy commuter thoroughfare. Additionally, because Boylston Street is one-way westbound, the proposed front yard fence will not obstruct oncoming traffic. The Planning Board did recommend, however, that the fence be set back slightly from the property line so that daylilies may be planted between fences and the street.

The Planning Board also did not object to the proposed off-street parking reconfiguration. The angled parking will not significantly increase non-conformance with front and side-yard setback requirements, and these new parking spaces will be screened by fencing and landscape features.

Therefore, should the Zoning Board of Appeals find that the statutory requirements for both special permit and variance relief have been met, the Planning Board recommended approval of the plans submitted by Boston Survey, INC. dated July 31, 2014, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan showing the fence set slightly back from the property line to provide for a planting bed and showing the parking lay-out, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities subject to review and approval by the Assistant Director for Regulatory Planning.
3. 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: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) a Certificate of Appropriateness signed by the Preservation Commission Chair; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Board deliberated on the merits of special permit and variance relief as requested. The Board was satisfied that the proposal met conditions for a special permit giving yard setback relief and included appropriate counterbalancing amenities. However, the Board was initially not in agreement whether the statutory requirements for a zoning variance had been fulfilled. All Board Members agreed that debris, noise, and light generated from Boylston Street activity did constitute a hardship. Board Member, Mark Zuroff was not satisfied that the 77 Norfolk Street lot itself is unique within the Chestnut Hill neighborhood and amongst properties located along Boylston Street. Mr. Zuroff added that alternative screening options like hedges or trees do not require a variance and are available to the applicant.

Mr. Liss responded by stating that single-family lots of this size are indeed unique along Boylston Street. Chairman Geller believed that limited front-yard space is not conducive to the installation of large trees that would be required to screen vehicular activity along Boylston Street. Chairman Geller also stated that the location of the home on the lot supports the claim for lot uniqueness. Chairman Geller agreed that similarly sized homes and lots do exist along Boylston Street, but the majority are set back or slope down away from the street level.

Mr. Zuroff agreed that the location of the structure itself could fulfill the lot uniqueness requirement, but reiterated that his hesitation in recognizing the variance claim be included in the record.

The Board agreed that debris, noise, and light generated from vehicular traffic along Boylston Street constitutes a valid hardship, and the location of the structure on the lot, in relation to Boylston Street, and overall topography adequately characterize the lot as being unique, thus meeting the statutory requirements for a variance.

The Board voted unanimously that the requirements had been met for the issuance of special permits under Sections 5.43, 6.04.5.c.1, 6.04.5.c.2, and 9.05 of the Zoning By-Law. The Board made the following specific findings pursuant to said 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.

The Board also voted unanimously that the statutory requirements for a variance from application of the provisions of Section 5.52 of the Zoning By-Law had been met under **Massachusetts General Laws Chapter 40A, Section 10.**

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan showing the fence set slightly back from the property line to provide for a planting bed and showing the parking lay-out, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities subject to review and approval by the

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK

Assistant Director for Regulatory Planning.

3. 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: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) a Certificate of Appropriateness signed by the Preservation Commission Chair; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

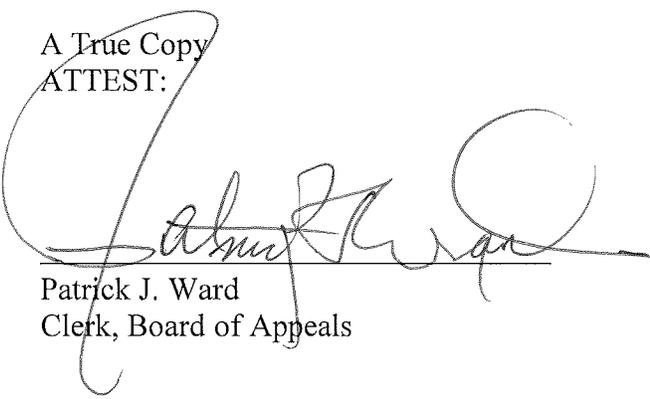
**Unanimous decision of the**

**Board of Appeals**

Filing Date: 3/10/15

  
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Jesse Geller, Chairman

A True Copy  
ATTEST:

  
\_\_\_\_\_  
Patrick J. Ward  
Clerk, Board of Appeals