



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

# *Town of Brookline*

## *Massachusetts*

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Brookline, MA 02445-6899  
(617) 730-2010  
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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2016-0017  
OWNER: PETER AMES  
90 IVY STREET, BROOKLINE, MA

Petitioners, Peter, Nicholas, and Oliver Ames, applied to the Building Commissioner to construct a ten foot tall retaining wall along portions of the side and rear lot line at 90 Ivy Street. 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 April 28, 2016 at 7:00 p.m. in the Selectmen's Hearing Room as the time and place of a hearing for 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 April 14, 2016 and April 21, 2016 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:

**90 IVY ST – CONSTRUCT A 10-FOOT TALL BRICK PRIVACY WALL IN THE REAR AND SIDE YARDS in an S-7, Single-Family, residential district, on April 28, 2016, at 7:00 PM in 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner/Owner: AMES PETER J & OLIVER R P & NICHOLAS E) *Precinct 1***

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

- 1. Section 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.60: Side Yard Requirements**
- 3. Section 5.70: Rear Yard Requirements**
- 4. Section 5.62: Fences and Terraces in Side Yard**
- 5. Section 5.74: Fences and Terraces in the Rear Yard**
- 4. Any Additional Relief the Board May Find Necessar**

*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  
Jonathan Book*

**Publish: April 14, 2016 & April 21, 2016**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Board Chairman Jonathan Book and Board Members Johanna Schneider and Christopher Hussey. The project architect Timothy Burke, of Timothy Burke Architecture located at 142 Berkeley Street, Brookline, MA, presented project details to the Board. Mr. Burke

stated that an existing 10-foot tall stockade fence exists along the southeastern most portion of the subject property. Mr. Burke explained that the fence is in disrepair and the Petitioner wishes to replace this privacy feature with a 10-foot tall brick wall. Mr. Burke stated that the 90 Ivy Street property is a single-family dwelling that is situated directly on the board between the Cottage Farm residential district and the local business zoning district along Beacon Street. Mr. Burke described the proposed brick wall as a method to maintain privacy and “firm up the edge” that delineates the residential district from the adjacent commercial district.

Mr. Burke further explained that the petitioner worked closely with abutting residents on the wall design and the project received unanimous approval from the Preservation Commission in February of 2016 and unanimous support from the Planning Board in March of 2016. Mr. Burke described the wall design as traditional garden style with pilasters, bluestone caps, and an entrance gate. The wall would be located along the portion of the rear and side (east) lot lines that is exposed to St. Marys Court.

Board Chairman Jonathan Book requested additional detail regarding the purpose of the wall itself. Mr. Burke stated that the privacy wall would specifically mitigate noise and visual impact generated from a high level of commercial related activity along St. Marys Court. Mr. Burke stated that this private way extends along the rear of various commercial uses along Beacon Street and is therefore utilized for parking, trash removal, and deliveries.

Board Member Christopher Hussey requested clarification as the exact location and length of the proposed wall. Mr. Burke stated that the wall would extend approximately 35 feet along the east side lot line and 27.5 feet along the rear lot line. The wall would extend between two existing adjacent structures to provide a consistent screened edge for the subject property.

Chairman Book called for public comment in favor of, or in opposition to, the Petitioner’s proposal.

Nicholas Ames, of 8 Park Street, Easthampton, MA, spoke on behalf of the Petitioner and stated that the proposed wall would benefit the 90 Ivy Street property as well as the wider Cottage Farm neighborhood. Mr. Ames characterized the level of commercial activity along St. Marys Court as being intense and out of character with the single-family neighborhood located directly to the north.

Board Chairman Book called upon Zoning Coordinator Jay Rosa to review the findings of the Planning Board.

**FINDINGS**

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

**Section 5.60 – Side Yard Requirements**

**Section 5.70 – Rear Yard Requirements**

**Section 5.62 – Fences and Terraces in the Side Yard**

**Section 5.74 – Fences and Terraces in the Rear Yard**

<b>Privacy Wall</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Side-Yard Setback</b>	15 Feet	N/A	0 Feet	<b>Not needed*</b>
<b>Rear-Yard Setback</b>	30 Feet	N/A	0 Feet	<b>Not needed*</b>
<b>Maximum Wall Height (side &amp; rear yards)</b>	8 Feet	10 Feet	10 feet	<b>Variance/ Special Permit**</b>

*\* If the height is waived by special permit then no relief is needed for side or rear yard setbacks.*

*\*\*Under Section 5.62 and 5.74, the Board of Appeals may waive fence/wall height requirements by special permit where it is warranted to mitigate noise or other detrimental impacts.*

Mr. Rosa stated that the Planning Board unanimously supported the rear-yard privacy wall. There is an existing deteriorating fence that is comparable in height and this proposal will

certainly improve the condition of this portion of the property. Board Members were supportive of the proposed height because St Marys Court is highly active in terms of trash removal, commercial deliveries, and vehicular activity. The location of the property along an active commercial district is also unique amongst single-family dwellings located in the immediate Cottage Farm neighborhood.

Therefore, the Planning Board recommended approval of the site plan by Elliott Paturzo, dated 1/13/15, and privacy wall elevations by Timothy Burke, dated 12/28/15, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, and privacy wall plans, 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 including 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) final floor plans and elevations, stamped and signed by a registered.

Board Member Hussey suggested that the requirement of a floor plan is not appropriate in this instance.

Mr. Burke requested that the requirement for a final site plan be removed from the record because the Petitioner is seeking special permit relief for the wall height itself rather than setback relief for a structure located within required side or rear yard. In Mr. Burke's opinion no counterbalancing amenities are required for the Board to find that the proposal is worthy of the zoning relief as requested.

Board Chairman Book requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the Building Department also has no object to the relief requested. Mr. Yanovitch confirmed that two forms of relief may be applied to this relief under Zoning By-Law **Section 5.74** for the maximum wall height or **Section 5.43** for the noncompliant side and rear yard setbacks. Mr. Yanovitch also confirmed that counterbalancing amenity may not be required if the Board finds that the privacy wall serves to mitigate adverse impact associated with noise and safety.

The Board deliberated on the merits of special permit relief as requested. Board Member Johanna Schneider agreed that the ten foot privacy wall is adequate and appropriate to mitigate noise and activity occurring on St. Marys Court. Ms. Schneider acknowledged that the high level of commercial activity is somewhat atypical in terms of abutting a single-family residential district. Ms. Schneider believed that the privacy wall would be a benefit for the subject property as well as the general Cottage Farm neighborhood.

Mr. Hussey supported special permit relief for the wall height itself in accordance with By-Law **Sections 5.62** and **5.74**. Mr. Hussey agreed that the proposed wall height is warranted to mitigate noise and impact as required for the grant of a special permit.

Ms. Schneider concurred with Mr. Hussey's comments and further stated that the privacy wall location is appropriate to mitigate the impact of traffic, loading, and trash removal on St. Marys Court.

Chairman Book agreed with Board Member comments and he concluded that the general standards required for the grant of a special permit under By-Law **Section 9.05** are also satisfied. Mr. Book further suggested the modification of special permit conditions. Mr. Book requested

to strike stated condition #2 and modify stated condition #3 to eliminate the need for a final floor plan and to add the standard condition requiring recording of the Board's decision with the Registry of Deeds.

The Board voted unanimously that the requirements have been met for the issuance of a special permit under Sections 9.05, 5.62, and 5.74 of the Zoning By-Law, granting relief from the provisions of Sections 5.60, 5.62, 5.70, and 5.74. The Board made the following specific findings pursuant to Section 9.05 of the Zoning By-Law:

- The specific site is an appropriate location for such a use, structure, or condition.
- The use as developed will not adversely affect the neighborhood.
- There will be no nuisance or serious hazard to vehicles or pedestrians.
- Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- 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 voted unanimously to grant special permit relief, subject to the following revised conditions:**

- 1. Prior to the issuance of a building permit, the applicant shall submit a final site plan, and privacy wall plans, 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 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) final elevations, stamped and signed by a registered architect, and 3) evidence that the Board of Appeals Decision has been filed with the Registry of Deeds.**

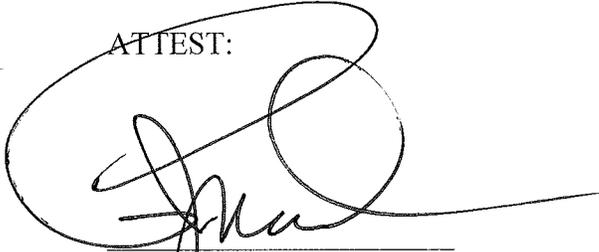
**Unanimous decision of the  
Board of Appeals**

Filing Date: 5/26/16

A True Copy

  
Jonathan Book, Chairman

ATTEST:



Patrick J. Ward  
Clerk Board of Appeals

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