

Town of Brookline Massachusetts

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TOWN OF BROOKLINE

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2013-0031
H. RICHARD TYLER & JOYCE TYLER

Petitioner, Dr. H. Richard Tyler, applied to the Building Commissioner for permission to change the use of the premises to include an accessory physician's office at 169 Fisher Avenue, Brookline, Massachusetts. The application was denied and an appeal was taken to this Board.

On April 4, 2013 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 fixed July 11, 2013 at 7:00 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 their attorney 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 on June 27, 2013 and July 4, 2013 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **Dr. H. Richard Tyler**

Owners: **Dr. H. Richard Tyler & Joyce S. Tyler f**
Location of Premises: **169 Fisher Ave., Brookline, MA**
Date of Hearing: **July 11, 2013**
Time of Hearing: **7:00 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th Floor**

A public hearing will be held for a special permit from:

1. Section 4.07: Table of Use Regulations, Use # 58 (*a,d)

of the Zoning By-Law to change use to include accessory physician's office.

Said premise located in a **S-25 District**.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

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.

**Jesse Geller
Christopher Hussey
Jonathan Book**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Zoning Board of Appeals Chairman Mark Zuroff, and Zoning Board of Appeals Members Christopher Hussey and Avi Liss. The case was presented by the attorney for the Petitioner, Adam R. Barnosky, Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445.

Zoning Board of Appeals Chairman Mark Zuroff, called the hearing to order at 7:00 p.m. Attorney Barnosky stated that the Petitioner proposes to change the use of the premises to include an accessory home office at 169 Fisher Avenue.

Attorney Barnosky presented to the Board a background of the property, stating 169 Fisher Avenue is a two and a half story large single family home located at the intersection of Hyslop Road and Fisher Avenue. Attorney Barnosky stated that there is a two car garage in the southeast corner of the lot with a driveway off of Fisher Avenue. Attorney Barnosky stated that the site is adjacent to the Newbury College campus and the rest of the neighborhood is primarily single-family properties with large homes.

Attorney Barnosky stated that the Petitioner and his wife have lived in Brookline since 1956 and at 169 Fisher Avenue for approximately 50 years. Attorney Barnosky stated that the Petitioner was a Professor of Neurology at Harvard Medical School and the head of the section of Neurology at Brigham and Women's Hospital. Attorney Barnosky stated that the Petitioner retired from his academic and executive roles and has spent the last 25 years as a "neurologist in practice" with an office at 1 Brookline Place. Attorney Barnosky stated that the Petitioner plans to close the office located at 1 Brookline Place between September 1, 2013 and July 30, 2014. Attorney Barnosky stated that the Petitioner would like to ease the transition into retirement for his patients who have been a part of his practice for a lifetime, by seeing the occasional patient who may need some counseling or reassurance.

Attorney Barnosky stated that the office will be 243 square feet of existing personal home office space in a 5,368 square foot home. Attorney Barnosky stated that the gross business floor area includes hallways and entry ways, totaling 372 square feet, which is shown in detail on the plans dated February 13, 2013 by Jonathan Raisz. Attorney Barnosky stated that there will be no exterior changes to the property. Attorney Barnosky stated that there is a large driveway with parking directly in front of the patient entry on the side of the home. Attorney Barnosky stated that the Petitioner plans to see only five or six patients per week, between the hours of 10 a.m. to

3 p.m. Attorney Barnosky stated that the Petitioner intends to use this office for the next 2 to 5 years for existing patients and will not be seeking new patients or consultations.

Finally, Attorney Barnosky discussed relief under Section 4.07 of the Zoning By-Law, whereby a special permit is required under Section 9.05 of the Zoning By-Law to change the use of space to allow the Petitioner to see clients in his home office. As for Section 9.05, Attorney Barnosky noted: (1) the specific site is an appropriate location where there will be no negative visual impact on the streetscape; (2) there will be no adverse affect the neighborhood where the Petitioner will only see a handful of patients and there is ample parking tucked away; (3) no nuisance or serious hazard to vehicles or pedestrians exists where no deliveries or service vehicles are needed; (4) adequate and appropriate facilities will be provided for the proper operation; and (5) development will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Zoning Board of Appeals Chairman Zuroff asked if anyone present wanted to speak in favor of the application. No one spoke in favor.

Zoning Board of Appeals Chairman Zuroff asked if there was anyone present who wished to speak in opposition of this application. No one spoke in opposition.

The Zoning Board of Appeals Chairman called upon Timothy Richard, Town Planner, to deliver the comments of the Planning Board.

FINDINGS

Section 4.07: Table of Use Regulations

A special permit is required to change use to include an accessory physician's office.

Mr. Richard stated that the Planning Board has no objection to the proposal for a physician's home office. Mr. Richard stated that in the event that the property changes hands and is occupied by another resident physician, the special permit should be limited to a five year time period; at

which time, it could be extended if no negative impacts are being created, and the conditions are being met. Mr. Richard stated that the Planning Board also recommends that the practice be limited to no more than ten patients a week, during the time period of Monday through Friday, from 9:00 a.m. to 5:00 p.m. Therefore, the Planning Board approves a physician's home office for a period of five years per the plans by Jonathan Raisz Architect, dated 2/27/13, subject to the following conditions:

1. Office hours shall be restricted to Monday through Friday from 9:00 a.m. to 5:00 p.m.
2. The number of patients seen in a week shall be no more than 15 patients.
3. The relief granted herein shall terminate in five years unless the Board of Appeals, after further public hearing, votes to extend the same.
4. 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Zoning Board of Appeals Member Christopher Hussey asked if the Planning Board had any objection to removing condition 4(1) requiring a final site plan stamped and signed by a registered engineer or land surveyor. Mr. Richard stated that there was no problem striking the condition.

The Zoning Board of Appeals Chairman then called upon Michael Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department had no objections to the relief sought under this application. Mr. Yanovitch suggested a minor alteration to the third Planning Board condition. Mr. Yanovitch stated that the Board should consider amending the condition to include the language "the relief is granted herein to this Petitioner for a period of five years unless the Board of Appeals, after further public hearing, votes to extend the same." Zoning Board Zoning Board of Appeals Chairman Mark Zuroff asked if the change was permissible. Mr. Yanovitch stated yes. Zoning Board Zoning Board of Appeals Member Avi Liss commented the change will prevent the

Petitioner from assigning or transferring the relief to the new owners without approval by the Board.

In deliberation, Zoning Board of Appeals Member Christopher Hussey stated that he was in support of the relief requested. Zoning Board of Appeals Member Avi Liss stated that the change was well within the accessory use and requirements of Section 4.07 of the Zoning By-Law. Zoning Board of Appeals Chairman Zuroff stated that the change was minor and the project was worthy of relief.

The Board then determined, by unanimous vote that the requirements for special permit relief from the requirements of Section 4.07, of the Zoning By-Law as requested pursuant to Section 9.05 of the Zoning By-Law was met. The Board made the following specific findings pursuant to said Section 9.05:

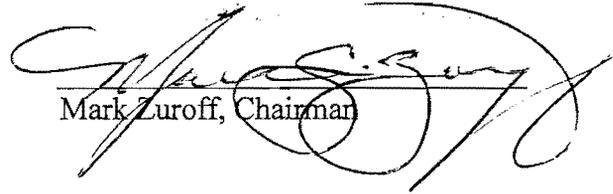
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

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

- 1. Office hours shall be restricted to Monday through Friday from 9:00 a.m. to 5:00 p.m.**
 - 2. The number of patients seen in a week shall be no more than 15 patients.**
 - 3. The relief is granted herein to this Petitioner for the shorter of a period of five years or until the Petitioner vacates the home unless the Board of Appeals, after further public hearing, votes to extend the same.**
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4. 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: evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

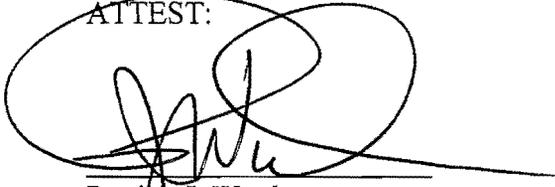
Unanimous Decision of
The Board of Appeals



Mark Zuroff, Chairman

Filing Date: August 5, 2013

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals