



**BOARD OF APPEALS**  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Christopher Hussey

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*Town of Brookline*  
BUILDING DEPT.  
TOWN OF BROOKLINE  
*Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2011-0070

Petitioner, Margaret S. Ross, M.D. applied to the Building Commissioner for permission to extend by ten years, the time period granted by the Board of Appeals in case #020018 dated May 30, 2002, to operate a psychiatrist's office in her home at 50 Sumner Road, Brookline. The application was denied and an appeal was taken to this Board.

On January 5, 2012, 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 February 9, 2012, at 7:00 p.m. in the Selectmen's conference room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to her attorney (if any) 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 January 22, 2012, and February 2, 2012, 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: **LINK, DAVID A & MARGARET R**  
Owner: **LINK, DAVID A & MARGARET R**  
Location of Premises: **50 SUMNER ROAD**  
Date of Hearing: **February 9, 2012**  
Time of Hearing: **7:00 p.m.**  
Place of Hearing: **Selectmen's Conference Room, 6<sup>th</sup> Floor**

A public hearing will be held for a **modification of Board of Appeals Case #020018 dated June 11, 2002.**

**Of the Zoning By-Law for an extension of the license for the next ten years at her home psychiatrist office.**

Said Premise located in an **S-10** (single-family) residential 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/MasterTownCalandar/?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.*

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Jesse Geller  
Christopher Hussey**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members Jonathan Book and Christopher Hussey. The case was presented by the petitioner, Margaret S. Ross.

Ms. Ross stated that she had been operating a psychiatrist's office out of her home since 1979. She said that she was granted special permit relief in 1979 and it was subject to renewal for various time spans. Her most recent extension in 2002 was for ten years. Ms. Ross reported

that over this period, 33 years, there have been no complaints of which she is aware. Ms. Ross reported that due to her job commitments elsewhere, she has only been seeing a few patients in her home of late. She stated that she would like to modify her hours of operation to include evening hours, 7:00p.m to 10:00p.m. as well as the daytime hours of 8:00a.m. to 5:00p.m.

The Planning Board report dated January 5, 2012, provided the history of relief granted by previous Boards of Appeal as well as a description of the home and neighborhood.

**8/10/79, BOA Case #2319** – special permit granted for a psychiatrist’s home office for three years, subject to seven conditions.

**7/17/87, BOA Case #2319A** – approval for a five year time extension of the previous decision with removal of sign requirements, subject to the following conditions:

1. There shall be no non-resident employees.
2. No more than 20 patients a week shall be seen.
3. No group therapy sessions shall be conducted.
4. The office hours shall be restricted to 8:00 a.m. to 5:00 p.m.
5. The petitioner shall advise her patients to park at the rear of the property which is accessible from Clark Road.
6. The relief granted herein shall terminate in 5 years unless this Board shall, after further public hearing, vote to extend the same.

**7/17/87, BOA Case #2319B** – approval to modify condition #6 of #2319A to increase the time extension for the relief from five years to a ten years. Condition #4 was also modified by the Board of Appeals to disallow weekend visits, so as to be consistent with other home psychiatry offices permitted in single family districts.

**5/30/02, BOA Case # 020018** – approval for a ten year time extension subject to the conditions as modified in BOA Case #2319B.

The report described the home at 50 Sumner Road as a single-family, wood-frame dwelling located between Clark and Buckminster Roads. There is vehicular access to the lot from Clark Road, which leads to a two-car parking space in the rear where the entrance to the office is located. The total office area is 465 square feet or 11% of the total living space. The neighborhood is predominantly single-family residential.

The Chairman asked whether anyone in attendance wished to speak in favor of or against the proposal. No one rose to speak.

Michael Shepard, Building Commissioner, delivered the findings of the Planning Board.

**Section 4.07 – Table of Uses, Use #58** – home offices for psychiatrists require a *special permit* if any clients visit the premises. The applicant is seeking a ten-year time extension to renew their special permit under this section of the Zoning By-Law.

Mr. Shepard reported that since the petitioner had conducted a limited practice from her home for almost 33 years without problems, the Planning Board believed that the continuation of the use of a portion of the basement for a home psychiatrist's office does not have an adverse affect on the neighborhood. However, to ensure that the office is operated in compliance with the Board of Appeals conditions, or if the premises are sold and occupied by another resident physician, the Board believed a ten-year time extension is the most appropriate mechanism to ensure continued review and the Planning Board noted that a seventh condition should be added to the approval to ensure the decision is recorded at the Registry of Deeds. Finally, the Planning Board supported the petitioner's request that the office hours be changed from 8a.m.-5:00p.m. to 7:00p.m.-10:00p.m. to allow her to see patients in the evening as she is now working off-site during the day. Therefore, the Planning Board recommended approval of a ten-year time extension for a home psychiatric office, subject to the following conditions:

1. There shall be no non-resident employees.
2. No more than 20 patients a week shall be seen.
3. No group therapy sessions shall be conducted.
4. The office hours shall be restricted to Monday through Friday, 7:00 p.m. to 10:00 p.m.
5. The petitioner shall advise her patients to park at the rear of the property, which is accessible from Clark Road.
6. The relief granted herein shall terminate in 10 years unless this Board shall, after further public hearing, vote to extend the same.

7. The applicant shall submit evidence that the decision has been recorded at the Registry of Deeds to the Building Commissioner within 45 days of the filing date of the decision.

The Chairman then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard stated that since this office had been operated without complaint for 33 years, he would recommend that the Board consider excluding the proposed ten year renewal period. He said if for whatever reason complaints did arise, his office could issue a cease and desist order which could be appealed by the petitioner back to the Board. Also, he said that the Building Department, in light of the petitioner's request, would recommend that the daytime hours be included in the hours of operation. Mr. Shepard said that the Building Department was supportive of the requested modification.

Board Member, Book, asked about the number of patients currently seen at the home office. Ms. Ross replied that due to her primary work commitments she sees fewer patients at her home. She said she would be happy with the 20 patients per week recommended by the Planning Board. Mr. Geller asked whether the arrival of clients after dark would pose a problem, and Ms. Ross replied that it would not.

The Board, having heard all the testimony, deliberated on the merits of the application. Mr. Book recommended that the hours of operation be modified to 8:00a.m. to 10:00p.m., Monday through Friday.

The Board then determined, by unanimous vote, the requirements of **Section 9.05** having been satisfied that it was desirable to grant the requested time extension with modification of the Planning Board suggested conditions as recommended by Mr. Book. 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 and modify as appropriate, previous decisions related to this case:

- 1. **There shall be no non-resident employees.**
- 2. **No more than 20 patients a week shall be seen.**
- 3. **No group therapy sessions shall be conducted.**
- 4. **The office hours shall be restricted to Monday through Friday, 8:00a.m. to 10:00 p.m.**
- 5. **The petitioner shall advise her patients to park at the rear of the property, which is accessible from Clark Road.**
- 6. **The relief granted herein shall terminate in 10 years unless this Board shall, after further public hearing, vote to extend the same.**
- 7. **The applicant shall submit evidence that the decision has been recorded at the Registry of Deeds to the Building Commissioner within 45 days of the filing date of the decision.**

Unanimous Decision of  
The Board of Appeals

Filing Date: February 16, 2012

A True Copy  
ATTEST:

  
\_\_\_\_\_  
Jesse Geller, Chairman

A handwritten signature in black ink, appearing to read "Patrick J. Ward". The signature is stylized with a large initial "P" and a long, sweeping underline.

Patrick J. Ward  
Clerk, Board of Appeals