



BOARD OF APPEALS  
Enid Starr, Co-Chair  
Jessie Geller, Co-Chair  
Robert De Vries

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 090023

Petitioner, Carole Barksdale, applied to the Building Commissioner to modify **Board of Appeals Decision #020031** to legalize construction of 160 additional square feet at her home at 633 Chestnut Hill Avenue not included within plans presented for prior zoning relief and upon which initial relief under the Zoning By-Law was granted. The application was denied and an appeal was taken to this Board.

On 14 May 2009, 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 25 June 2009, at 7:15 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 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 4 and 11 June 2009 in the Brookline Tab, a newspaper published in Brookline. 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: **BARKSDALE, CAROLE**

Location of Premises: **633 CHESTNUT HILL AVE BRKL**  
Date of Hearing: **6/25/09**  
Time of Hearing: **7:15 p.m.**  
Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup> Floor.**

A public hearing will be held for approval of 800 square feet of living space that has been already constructed and therefore modify BOA Case 020031 **at 633 CHESTNUT HILL AVE BRKL**

Said Premise located in a **S-15** (single family) 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.*

**Enid Starr  
Jesse Geller  
Robert De Vries**

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, Kathryn Ham and Jonathan Book. The petitioner, Carole Barksdale, was represented by her attorney, Jacob Walters of Goldenberg & Walters, 7 Harvard Street, Brookline, MA 02445-7379.

Mr. Walters explained that although advertised as 800 additional square feet, in fact, only an additional 160 square feet was constructed in excess of the square footage represented at the original hearing in 2002. Attorney Walters said that on 12 September 2002, the Board of Appeals approved a proposal to add 1.5 stories to the single-family dwelling as well as construct a single-story side addition. He said that the decision was appealed by a neighbor and that appeal was subsequently withdrawn.

Mr. Walters described the property at 633 Chestnut Hill Avenue as a single-family dwelling located on a rear lot north of Boylston Street. The front of the yard is landscaped with a pedestrian path; a driveway at the rear of the property is accessed by way of a driveway over another property. Other properties are residential in nature, primarily single-, two- and three-family dwellings.

Mr. Walters said that the petitioner, Carol Barksdale, would like to legalize the construction of a two-story side addition on her home. In 2002, the Zoning Board of Appeals approved a proposed single-story addition located to the side of the house and with a deck above, as well as other improvements. However, a two-story addition within the same footprint was constructed after the builder received a building permit for plans which did not conform to the original plans approved by the Board. Mr. Walters said that his client is seeking a modification to the original Board of Appeals decision to allow the extra 160 s.f. on the second floor.

Mr. Walters stated that the initial decision, among other things, approved a single-story addition of 160 square feet (8' x 20') with a deck above on the dwelling's north side. In fact an additional story of the same square footage was constructed and serves as the master bedroom. The roof of the addition is used as a deck. Attorney Walters said that the even with the additional 160 square feet, the dwelling is well below the maximum FAR and height limits.

The appeal by a neighbor of the initial decision, the subsequent withdrawal and the two years that intervened, led to the confusion regarding the plans, Mr. Walters said. He said that there was no attempt on the part of his client or the builder to construct the addition in excess of that which was approved.

Chairman Geller asked about the counterbalancing amenities that were offered in the initial decision and whether any additional amenities should be required should the Board approve the modification. Attorney Walters stated that there were significant landscape improvements done to the lot as well as additional drainage accommodations that were approved by the DPW in connection with the prior relief.

He said that in his opinion, his client had exceeded the counterbalancing amenities required by the initial decision. As to drainage, Chairman Geller asked whether the drainage issues that existed before the addition was constructed, had been ameliorated. Attorney Walters as well as his client commented that the drainage issues were solved and that they are aware of no complaints since the construction was completed. Polly Selkoe, Assistant Director for Regulatory Planning read a letter from Peter Ditto, the Director of Engineering at the DPW, stating that he had reviewed the drainage plan in 2003 and visited the site. He determined that the plan appropriately addressed the drainage issues as well as the physical constraints of the site. He said that the plan met all the appropriate industry standards for a project of this type. The Chairman asked that the subject letter be identified as Exhibit "A" and that it be made part of the permanent record of this matter.

The Chairman asked whether anyone in attendance wished to speak in favor of or in opposition to the proposal. Hearing no response, the Chairman asked for the report of the Planning Board.

Ms. Selkoe reported that the Planning Board was not opposed to legalizing the as-built two-story addition for this single-family dwelling. Although it is disappointing that the addition was not built according to the originally approved plans, the building will continue to comply with FAR and height limits, and the approximately 20 foot setbacks for the front and rear yards should be sufficient to protect abutting land owners from the newly constructed addition. Therefore, she said, the Planning Board recommended approval of the requested modification, subject to the following conditions, which are similar to the conditions which were attached to the original decision, and are now slightly modified:

- 1. Implementation of a final landscaping and site plan, showing an appropriate parking layout and the adjacent property access, shall be reviewed and approved by the Assistant Director for Regulatory Planning, prior to the issuance of a final Certificate of Occupancy.**
- 2. The parking area adjacent to the dwelling shall remain surfaced with a pervious material.**

Michael Shepard, Building Commissioner, delivered the comments from the Building Department.

Mr. Shepard said that although the additional story occupies the same footprint as initially approved, because the petitioner needed set-back relief for the side addition, adding a floor above exacerbated the approved condition. He agreed with Attorney Walters' accounting of the factual background of the initial hearing and confusion regarding the approved plans and the issuance of the building permit two years after initial relief. He said that he had no reason to believe that this was a ploy to gain additional floor area surreptitiously. Mr. Shepard said that since 2004, both the Planning and Building Departments have made substantial procedural changes to avoid issues such as this one. He described the size and shape of the lot and the fact that it is unusually large for the zoning district. He said that the Building Department recommended the appropriate modification of the decision.

The Board then deliberated on the requested modification. Jonathan Book commented that he did not believe the additional story exacerbated the original relief granted in this case and that he was in favor of the modification. Kathryn Ham and Chairman Geller both agreed with Mr. Book's comments. Mr. Geller specified that his conclusion and decision were based on testimony that construction of the additional area was accidental and not in flagrant disregard of the initial relief. Therefore the Board provided a **unanimous grant of an amendment to BOA case# 020031 dated 12 September 2002** subject to three additional conditions:

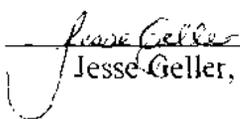
- 1. Implementation of a final landscaping and site plan consistent with the originally approved plans showing an appropriate parking layout and the adjacent property access, shall be reviewed and approved by the Assistant Director for Regulatory Planning, prior to the issuance of a final Certificate of Occupancy.**
- 2. The parking area adjacent to the dwelling shall remain surfaced with a pervious material.**
- 3. Prior to the issuance of a Certificate of Occupancy, the petitioner shall submit to the Building Commissioner, proof of recording of the amended decision at the Norfolk County Registry of Deeds.**

Chairman Geller commented that the original conditions approved in the 2002 decision shall remain in full force and effect as affected by the supplemental conditions provided above. He also said that the plan of record and upon which this modification is granted shall be the plans dated 2/26/08 titled

"Barksdale Residence" by Kneeland Construction Corporation, as modified and stamped by K and M Associates, Consulting Engineers, 11/18/04. The original conditions were:

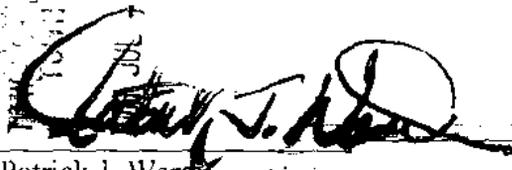
1. *A final landscaping and site plan, showing an appropriate parking lay-out and the adjacent property access, shall be reviewed and approved by the Director of Planning and Community Development, prior to the issuance of any building permits.*
2. *A water run-off drainage plan from a certified engineer shall be reviewed and approved by the Director of Engineering and submitted to the Planning Department, prior to the issuance of any building permits.*
3. *The parking area adjacent to the dwelling shall be made level and resurfaced with a more pervious material.*

Unanimous Decision of  
The Board of Appeals

  
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Jesse Geller, Chairman

Filing Date July 3, 2009

FILE  
JUL 14 2009  
A True Copy  
ATTEST



Patrick J. Ward  
Clerk, Board of Appeals