BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse 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. 090024

Petitioner, Marjorie Siegel, applied to the Building Commissioner for permission to keep chickens on her property at 59 Linden Street. The application was denied and an appeal was taken to this Board.

On May 21, 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 August 6, 2009, 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 his 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 July 16 and 23, 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:

Petitioners: **SIEGEL MARJORIE**
Location of Premises: **59 LINDEN ST BRKL**
Date of Hearing: **08/06/2009**
Time of Hearing: **7:00 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th. floor**

A public hearing will be held for a variance and/or special permit from:

Use #57, Table 4.07; Variance Required.
5.43; Exceptions to Yards and Setback Regulations, Special Permit Required
of the Zoning By-Law to be able to keep poultry on the premises at **59 LINDEN ST BRKL.**

Said Premise located in a **T-5** (two family and attached 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/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.***

Enid Starr
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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr and board members Jonathan Book and Mark Zuroff. Ms. Siegel presented her case before the Board.

Ms. Siegel described her home at 59 Linden Street as a large two-family residence on a small lot located in a neighborhood of similarly large multi-family homes bounded by Harvard and Kent Streets and near Linden Place. The lot is very deep and narrow. There is a garage in the rear yard. On the adjacent rear property, which fronts on Kent Street, is a large barn. She said that the neighborhood consists primarily of large two and three family homes, many of which are on small lots.

Ms. Siegel said that she is requesting to legalize the keeping of four chickens on her property. Previously, the chickens, which are pets for her daughter and a source of eggs for her family and neighbors,

were kept in a coop in the narrow space between her house and the abutting house. In response to the abutter's complaint, she moved the coop and chickens to the inside of her garage, which is in her backyard and at a greater distance from her abutter. She said that she would also like to have a fenced-in outdoor area for the chickens to the rear of the garage.

Ms. Siegel said that she acquired her pet chickens in May 2008 and at the time did not believe she was violating any town ordinance. She said that initially the coop was placed alongside her house. She reported that when a neighbor complained, she moved the henhouse inside her garage as soon as she was able to do so. Ms. Siegel said that during her first hearing before the Planning Board she learned that she needed a permit from the Board of Health to keep the chickens. She said that she applied for the required permit immediately. Ms. Siegel said that she would comply with all the conditions imposed by the Health Department.

Ms. Siegel said that she was requesting a Special Permit under **Section 5.43** because the shape of her yard makes it impossible to meet the 100' setback requirement from any residential structure, including her own. In order to fulfill the requirement for counterbalancing amenities, Ms. Siegel said that she is willing to keep the chickens inside the garage and keep their outdoor activity limited to a small fenced area to the rear of the garage. This would effectively screen them from her neighbors on either side. She noted that the neighbor directly to her rear has a large barn that screens her property from theirs. She said that she will provide additional landscaping to further screen the chicken's outside area from the neighbors. Ms. Siegel stated that she would not free-range her pet chickens, that they would always be confined to the garage at night and the fenced area during the day. In response to a neighbor's complaint regarding a rooster, Ms. Siegel reported that she never had a rooster and looked upon having a rooster as a nuisance. As to a neighbor's allegation that the chickens may be the reason for increased activity of skunks and

raccoons in the neighborhood she said that she had both skunks and raccoons visiting her property regularly long before she got her chickens.

Ms. Siegel mentioned the 14 letters of support from her neighbors. She said that her neighbors do not think that the presence of her chickens negatively affects the neighborhood since clean, adequate and appropriate facilities were provided for their keeping. Ms. Siegel stated that the chickens have become a neighborhood amenity. Families with children regularly visit her home to see the chickens, she shares eggs with neighbors and this also has had a positive effect upon her daughter who has cerebral palsy. Since her daughter is no longer at Pierce School she has had difficulty meeting other children in the neighborhood. Ms. Siegel reported that the presence of the chickens has helped facilitate the social interaction that was difficult before the chickens arrived.

The Chairman asked when the chickens were moved from the side of the house to their present location in the garage. Ms. Siegel responded that the chickens were moved into the garage 6 or 7 weeks prior to the hearing. The Chairman then asked Ms. Siegel what would be her permanent solution for exercising the chickens, should the Board grant the requested Special Permit. Ms. Siegel responded that she would build a fully enclosed area outside so the chickens could exercise during the day and they would return to the coop in the garage at night. Board Member Book asked about the complaint from the neighbor to the left and the letter of support from the neighbor to the right but specifically he asked about the neighbor to the rear. Ms. Siegel said that she has heard nothing from that neighbor but reminded the Board that he has a large barn on his property that effectively screens his home from the chickens. Mr. Book asked whether there was any plan to replace the chickens as they "pass on". Ms. Siegel responded that she thought that they will have served their intended goal and at this time she had no intention of replacing them. Asked how long chickens lived, Ms. Siegel responded five to as many as ten years. Board Member Zuroff commented that the Special Permit application stated that the chickens were pets and that they probably

would not be replaced. As to counterbalancing amenities he asked whether she had a plan in place and Ms. Siegel responded that she had not, that she had significant trees and bushes but would look to increase their numbers to provide more screening for her neighbors.

The Chairman then asked whether there was anyone in the audience that wished to speak against the requested relief.

Mr. Dennis Humphrey of 61 Linden Street, apartment #2, said that while initially a supporter of the chickens he was now opposed to their presence. He cited being awakened at 4:30 am when they start cackling, having to put up with their strong odor, being visited by skunks, being chased by a raccoon and having to spray his yard due to increased flies. He spoke of the potential health issues raised with the introduction of chickens into the neighborhood. The Chairman advised Mr. Humphrey that the By-Law allows the keeping of chickens and that the discussion was about the distance they were kept from residential buildings. A resident at 65 Linden Street stated that the strong odor of the chickens caused her to close all her windows and run the air conditioning. Ms. Heena Lee of 76 Kent Street stated that she was not in support of the keeping of these "unconventional pets" that they presented potential health issues and was afraid that approval of this request would set a precedent for the neighborhood. The Chairman reported that the only case before the Board was the one being heard and that any other case would only be decided on its merits or lack thereof.

The Chairman then asked whether anyone wished to speak in favor of the application.

Frank Farlow, Town Meeting Member and resident of 8 Bowker Road, reported that his constituency had nothing but support for the proposal. He said he had heard no negative comments regarding the keeping of chickens at 61 Linden Street. Robert Volk, a neighbor at 45 Linden Street, stated that various varmints have visited the neighborhood during the sixteen years he has been a resident. He said he has observed no increased activity since the chickens arrived. He observed that the 100' requirement for the

keeping of animals effectively precludes their presence in his neighborhood. He said that Ms. Siegel had made a great deal of effort to accommodate neighborhood concerns. Mr. Volk stated that he lives two or three houses away from the chickens and he observed no odor issue. The neighbor immediately to the right of Ms. Siegel's home reported that she observed no increased odor or noise from the chickens. Ms. Nelly Langlais said she lived at 125 Kent Street, about a two-minute walk to Ms. Siegel's property. Ms. Langlais reported that the chickens have had a positive effect upon Ms. Siegel's daughter and also upon the children from her day-care that occasionally visit them.

Polly Selkoe, Assistant Director for Regulatory Planning delivered the findings of the Planning staff.

Table of Use Regulations, Sec. 4.07, Use # 57 – Keeping chickens is an allowed use but their enclosure must be 100 ft. or greater from a residential boundary line. For this narrow lot, that is not possible. Under **Section 5.43**, the 100 foot setback may be waived by **special permit** to allow a lesser setback if a counterbalancing amenity is provided. In this case, the relocation of the chickens and installing a landscaping screen at the rear property line to screen the enclosure would serve as amenities.

Ms. Selkoe stated that the Planning Board in a 3-2 vote did not support this application. Opposing members felt that because the property is not large enough to meet the required setback of 100 feet from the property line, it is not appropriate to keep chickens in this tight urban area. However, two of the Planning Board members supported the proposal and felt that with the change to the location of the chickens from outside in the side yard next to the abutter, to inside the garage at night and occasionally outside during the day in an enclosure to the rear of the garage, there would be minimal impacts to neighbors either from noise or smells. Since no roosters are to be kept, these members felt that the chickens would make considerably less noise than the barking of a neighbor's dog, which is allowed by right, and that by securely containing the feed and keeping the coop and enclosure clean, there would be no negative impacts.

Ms. Selkoe reported that if the Board of Appeals should grant the relief, the Planning Board would recommend that any conditions attached to the Health Department's license for the keeping of animals should also be included in the Board of Appeals decision, as well as a requirement for the provision of landscape screening behind the garage at the rear and side property lines.

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. Mr. Shepard stated that while initially not in favor of the presence of the chickens in this somewhat tight neighborhood, after hearing testimony as to the therapeutic effect on Ms. Siegel's daughter as well as the educational experience and enjoyment for the neighboring children, that the Building Department supports the requested relief. Mr. Shepard stated that the early morning rising of the chickens could be lessened by eliminating the early morning light that causes the increased activity. He said that the Ms. Siegel has been extremely cooperative throughout the process. Mr. Shepard said that the Board may want to consider having the petitioner revisit the Board to see how the process was going.

The Chair commented to her fellow Board Members that discussion should be limited to the question at hand. She said that raccoons and skunks may be present whether the chickens were at 50' feet or at the allowed 100', therefore she did not think that issue was relevant and her fellow Board Members agreed. During deliberations Board Member Book said that the lack of distance was accommodated by the petitioner's keeping of the chickens in the garage. This helped regarding the smell as well. He said in his neighborhood he is often awakened by the sound of Canada Geese. Mr. Book said he was in favor of the relief but he would like the relief to be limited to the life of her chickens. He opined that the required license from the Board of Health adequately provides protections for the neighbors regarding noise and smell. Board Member Zuroff, said that he too supports the requested relief. He pointed out that among most of the animals cited in this accessory use, chickens were among the smallest. He noted that the Board could be having the same discussion about much larger animals such as horses. Mr. Zuroff added that he

did not condone citizens violating zoning then coming before the Board to request relief. He said with the monitoring provided by the Health Department's conditions he was supportive of the request. The Chairman expressed concern over limiting the relief to the lifespan of the current chickens. She said that it was not an appropriate condition. Ms. Starr opined that the annual inspection required by the Health Department would adequately address concerns regarding sanitation and varmints going forward. Both Mr. Book and Mr. Zuroff responded that since it was the petitioner's stated intent not to replace the chickens that they were more comfortable limiting the relief to the current flock.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant a Special Permit in accordance with **Section 5.43**, and makes the following findings pursuant to **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.

e. 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 the requested relief subject to the following conditions:

1. **The relief shall be limited to the four chickens currently owned by the petitioner.**

2. **Within 45 days of this decision, the petitioner shall submit to the Assistant Director for Regulatory Planning, a landscape plan showing additional planting to help ameliorate some neighborhood concern relative to screening and also, the petitioner shall make every effort through measures such as darkening the window in the garage, to lessen the early morning noise.**

3. **That the petitioner is bound by the preliminary conditions provided by the Director of Public Health in his attached letter dated July 22, 2009.**

4. **The petitioner shall submit to the Building Commissioner, proof of recording of the decision at the Norfolk County Registry of Deeds within forty five (45) days of this decision.**

Unanimous Decision of

The Board of Appeals

Filing Date: August 26, 2009

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals

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TOWN OF BROOKLINE
TOWN CLERK
2009 AUG 26 A 11:07

Enid Starr, Chairman

Twenty days have elapsed and no appeal has been filed.

A True Copy:
Attest:

Patrick J. Ward
Town Clerk

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2009 OCT 16 A 11:18

TOWN OF BROOKLINE

DEPARTMENT OF PUBLIC HEALTH

11 Pierce Street, Brookline, Massachusetts, 02445
Telephone: (617) 730-2300 Facsimile: (617) 730-2296
www.BrooklineMA.Gov

July 22, 2009

To: Mark J. Zarillo – Chairman
Planning Board of Appeals

From: Alan Balsam – Director of Public Health

Re: 59 Linden St.
Marjorie Siegel – Property Owner

Please be advised that this Department has inspected the above noted property to establish conditions for the Keeping of Animals – 4 Chickens.

The following are this Department's preliminary conditions should approval be granted:

- The permit will be limited to 4 chickens
- No roosters will be allowed
- The chickens will be kept in an enclosed shed/garage at the rear of the property.
- An enclosed pen can be constructed at the rear of the shed/garage. The pen must be covered with chicken wire (or other approved material) on all sides, including the top
- Feeding of the birds shall occur only in the shed.
- Feed bags should be stored in pest proof containers with covers.
- Manure must be cleaned up regularly and composted or otherwise disposed of in a sanitary manner.
- The owner must maintain good hygiene practices after contact with birds.
- The owner must have an annual inspection visit by a licensed pest control company to address any pest control issues. Copies of this inspection will be required for annual permit approval.
- Any sick birds must be reported to the Brookline Health Department, (617) 730-2300, and Massachusetts Department of Agriculture Division of Animal Health at (617) 626-1792.
- This approval is recommended for one year so the Department can evaluate compliance with the established conditions and community feedback.

Cc: P. Selkoe

Pat/58lindenKeepingOfAnimalsFinal