



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. 090025

Petitioner, Nelly Langlais, applied to the Building Commissioner for permission to operate a family day care in her home at 125 Kent 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 July 2, 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 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 June 11 and 18, 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: **NELLY LANGLAIS**  
Location of Premises: **125 KENT ST BRKL**  
Date of Hearing: **07/02/2009**  
Time of Hearing: **7:15 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:

**Section 4.07, Use 15b; Special permit required** of the Zoning By-Law to operate a family daycare in home at **125 KENT STREET 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/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.*

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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, Enid Starr and board members Jonathan Book and Jesse Geller. Ms. Langlais presented her case before the Board.

**Background Information** At the Fall 2008 Town Meeting, warrant article 14 was passed and subsequently approved by the Attorney General. Article 14 amended the Table of Use Regulations to include a new use, #15b, to allow large family day care homes for up to 10 children under the age of seven, or under the age of sixteen if there are children with special needs on site. Massachusetts General Law requires at least one approved assistant in large family home day cares. Use #15b allows large family home day cares by right in L, G, O, and I zones; by special permit in SC, T, F, and M zones; and would prohibit them in S zones. The state is currently reviewing their daycare regulations and it is anticipated there will be some changes to the laws; therefore the current amendment has a June 1, 2010 sunset date. It is expected a revised version of the amendment, consistent with the new state laws, will be passed at Town Meeting prior to the sunset date. Any special permits granted to large family home daycares prior to the sunset date will remain valid after the revised amendment is adopted.

Ms. Langlais described her home and neighborhood as a large 3.5 story, three unit decker apartment house built in 1900. There is a common driveway shared by 123 and 125 Kent Street, which leads to separate parking areas for each address. The parking area for 125 Kent Street has parking to accommodate

six cars, which is used primarily by residents in the building. She said that she lives and operates her pre-school in her approximately 1,800 square foot first floor unit. There are no play areas on site and she relies on local parks and playgrounds for recreation.

Ms. Langlais said she has been operating her pre-school, Les Papillons, for 23 years. The pre-school operates Monday through Friday, from 8:30-12:30 for nine children with extended hours once a week until 3:00 and 5:00 for six children. She serves children ages 2-2.5 years old on Tuesdays and Thursdays, and children ages 3-4 years old on Mondays, Wednesdays and Fridays. Each group consists of nine children. Although licensed by the State for ten children, Ms. Langlais said she keeps one slot open to allow for temporary coverage in an emergency situation for a family in need. There are some special needs children in the daycare who are usually very shy socially, delayed in their physical growth, fine motor coordination or speech, or have serious nutrition issues. When necessary, she brings in a volunteer to help with additional therapy if needed. However, she said that she has only has one full time employee who commutes from Brighton and arrives by bus or rides her bike. In addition, she said that she purchases a resident parking permit and parks her car in front of the house to allow for the use of her space in the parking area behind the house for parents with infants. She stated that she encourages parents to park on Linden Street, which has less competition for parking than Kent Street and walk to her home, which has been successful.

The Chairman asked whether anyone in the audience wished to speak in support or in opposition to the proposal and Nancy Cuning of 47 Alton Place stated that she was also a licensed day care provider and has known the petitioner for many years. She said that Ms. Langlais provides a needed service to the community and operates a clean, well managed family day care.

Courtney Synowiec, Planner, delivered the findings of the Planning Department.

**Section 4.07 – Table of Use Regualations, Use # 15B**

A special permit may be granted by the Board of Appeals to allow Large Family Daycare Homes as an accessory use for up to ten children.

Ms. Synowiec reported that the Planning Board was supportive of this proposal to legalize the pre-school at 125 Kent Street. Given the longevity of its operation without complaint, it is reasonable to believe this facility has not had a detrimental impact on the surrounding neighborhood. She said that the applicant has made a number of accommodations to make drop-off and pick-up as easy as possible for the parents, as well as the neighbors, while providing a necessary service to the residents of Brookline. Therefore, the Planning Board recommended approval of the special permit for the Large Family Daycare Home for up to ten children as an accessory use, subject to the following condition:

- 1. A parking diagram shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.**

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. He said that the petitioner has been extremely cooperative throughout the process. He said that there have been no complaints about the operation and stated that the Building Department enthusiastically supports the requested zoning relief. He suggested an additional condition relative to the recording of the decision should the requested relief be granted by the Board.

The Chair asked whether any members of the Board had any questions. Jonathan Book inquired about the parking and how it operated as far as pick up and drop off. He stated that he would like to see the condition proposed by the Planning Board broadened to include a narrative regarding this procedure. Jesse Geller stated that he had no issues with the requested relief.

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 4.07 Use 15b**, operation

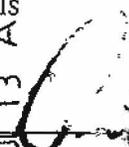
of a large Family Daycare Home as an accessory use for up to ten children and makes the following findings pursuant to Section 9.05:

- 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.

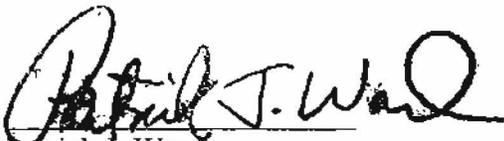
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

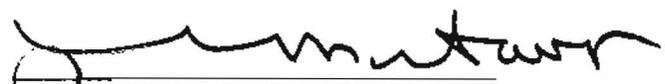
- 1. A parking diagram with written narrative describing pick-up and drop-off procedures shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
- 2. The petitioner shall submit to the Building Commissioner, proof of recording of the decision at the Norfolk County Registry of Deeds within forty five (45) days of this decision.

Unanimous Decision of  
The Board of Appeals

Filing Date:  July 13, 2009

A True Copy  
ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals

  
Enid Starr, Chairman