



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. 080022

Petitioners, Joseph Helfgot and Susan Whitman-Helfgot applied to the Building Commissioner for permission to construct an addition to their home at 432 Washington Street. The application was denied and an appeal was taken to this Board.

On 17 June 2008, 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 17 July 2008, at 7:30 p.m. on the 2<sup>nd</sup> floor of the Main Library as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its 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 26 June and 3 July 2008 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: HELFGOT, JOSEPH and SUSAN**

Location of Premises: 432 WASHINGTON ST BRKL

Date of Hearing: 07/17/2008

Time of Hearing: 7:30 p.m.

Place of Hearing: Main Library, 2<sup>nd</sup>. floor

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

1. 5.30; Maximum Height of Buildings, Variance Required.
2. 5.31.2; Exceptions to Maximum Height Regulations, Special Permit Required.
3. 5.43; Exceptions to Yard and Setback Regulations, Special Permit Required.
4. 5.70; Rear Yard Requirements, Variance Required.
5. 8.02.2; Alteration or Extension, Special Permit Required

of the Zoning By-Law to construct an addition per plans at 432 WASHINGTON STREET BRKL.

Said Premise located in a T-6 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 Chair, Enid Starr and Board Members, Rob De Vries and Mark Allen. The petitioner, Susan Helfgot, was present as well as her architect, Kenton Duckham of Duckham Architecture and Interiors, 320 Congress Street, Boston, MA.

Mr. Duckham described the home located at 432 Washington Street as a replica of the John Hancock mansion located on Beacon Hill. He said that Mrs. Helfgot is seeking zoning relief to construct an addition for a new residential elevator and interior stair to the side of the home for

handicapped accessibility. He said that he originally designed the addition before he was made aware that the apparent side yard was actually a rear yard. During the design phase, they believed they could fit the addition within the side yard requirements. Mr. Duckham described the extraordinary need for the addition due to the serious health condition of Mrs. Helfgot's husband, Joseph.

The Chair asked what counterbalancing amenities would be provided if the Board considered waiving the rear setback. Mrs. Helfgot responded that they had done over \$15,000 of landscape work and erected a fence. The Chair also asked whether the petitioner could discuss the issue of height. Mr. Duckham responded that the addition was designed to have the same roof pitch but a bit smaller in the Dutch colonial style. He said that the main house is 39'11" from the existing grade and the addition is at 36'5". Mr. Duckham said he had a reduced-height version which would place the height at 35'. When asked about the square footage of the addition, Mr. Duckham responded that it is approximately 900 square feet, still within the allowable FAR.

Mr. Duckham said that cost and timing are driving the petition. He said that Mr. Helfgot recently returned home from the hospital after a lengthy stay. Mr. Duckham said that the designed location was the natural location for the elevator; that locating it within the existing home would destroy the historic nature of the interior.

Mrs. Helfgot stated that there are a number of houses within her neighborhood that are in excess of 35' in height. She said one neighbor at 16 Greenough Circle received a large amount of zoning relief to build their home but she did not oppose the proposal because it made sense for the neighborhood. She said that her husband's condition requires several pieces of medical equipment including a large container of oxygen. Mrs. Helfgot said that there are bedrooms on the third floor of the home and it is the location of the game room that her children use and she feels that the

elevator/staircase would give them another means of egress from that level. She said that they designed the addition with the neighborhood in mind but when she tried to reach out to the neighbors, she had little success. She described the neighboring homes as being very close to their side yards. Mr. Duckham said that there are a series of enclosed porches close to the side lot line in the neighborhood. Mrs. Helfgot reminded the Board that there are existing porches that she plans to enclose to accommodate the elevator and related equipment. She said that she and her husband had spent a lot of time restoring the home and the addition of another set of stairs and elevator to the existing interior would compromise its integrity.

The Chair asked whether anyone wished to speak in favor of the proposal.

Ellen Ball, 441 Washington Street, David Lapidus, 28 Emerson Street, Toni Lansbury, 24 Elm Street, Lorraine Goldstein, 15 Greenough Street and David Szeto, 82 Davis Avenue spoke in support of the relief. They spoke of Mr. Helfgot's condition and the need for the addition. They opined that it was a quality of life issue for Mr. Helfgot. They said that it is a very tight neighborhood of single family homes, condominiums, a commercial area and that many of the homes would not comply with existing zoning requirements. Generally, they said, the Helfgots have improved and maintained the condition of their historic home in the face of severe medical needs.

The Chair asked whether anyone wished to speak in opposition to the petition.

Attorney Jacob Walters of Goldenberg, Walters and Lipson, 7 Harvard Street, Brookline, MA said he was representing the owners of 3 Greenough Circle, the Richmond's. Mr. Walters stated that §5.70 is a rear setback issue, that a variance would be required. He said that the required rear yard is 30' and the addition comes within 10'. He reminded the Board that it was a three-story addition. He said the §5.43 requires that the counterbalancing amenity ensure the same standard of

amenity to nearby properties as would have been provided with compliance with the bylaw.

Attorney Walters suggested that the landscaping suggested by the petitioner would not offset the three story addition. He said that while dimensional requirements could be waived by special permit under §5.43, that since the amenities in his opinion are not adequate, relief would have to be in the form of a variance and the petitioners have provided no evidence of meeting the statutory requirements for a variance. He said that the Board must find under §9.05 that the addition is in an appropriate location and that it does not adversely affect the neighborhood. While he heard nothing in the petitioner's presentation of a request for a variance from height regulations, he said that the Planning Board's intimation that §5.31.2 applies in this case is not appropriate. When asked, Mr. Walters reiterated that in his opinion the height cannot be waived under §5.31.2, that the only relief possible was by variance and the petitioner did not meet the statutory requirements for a variance.

Clint Richmond, a direct abutter at 3 Greenough Circle stated that it is a shame that this issue is dividing an otherwise agreeable neighborhood. Mr. Richmond stated that the house in question is the tallest house in the neighborhood. He questioned whether this plan will upset an already delicate situation. He noted that the applicant's house looms 47 feet over his yard if the chimney is included. Mr. Richmond stated that he opposes the proposal because of height and massing issues. He noted that his rear yard is the only outdoor space that is useable because both the side and front yards are too small. Mr. Richmond stated that the Helfgot's grade is higher, the foundation higher, the ceilings higher, and the floor of their second-story is at the ceiling level of his second-story. He argued that the combination of the proposed height and proximity, even for a two-story addition, would have a higher apparent height than the existing 40 feet. Mr. Richmond summarized by stating that the applicant's proposal was inadequate and he failed to see, that if the neighborhood is already out of compliance, why making it more out of compliance, would make it better.

Sandra Lundy, an abutter and resident of 9 Greenough Circle, stated that this matter is not about accessibility alone, since she believes there are alternate plans available that could work within the by-law. Ms. Lundy argued, as an example, that an inside elevator could be constructed with an application for a special permit for an outside means of accessible egress. Ms. Lundy also noted that the proposed plan increases the dimensions of a house that is already over 5,000 square feet by more than 900 square feet. She also noted her concerns over privacy issues and diminution of value to her property. Ms. Lundy stated further that it is up to the applicants and not the abutters to prove that they are entitled to the exemptions under the zoning by-law and she does not believe the applicants have accomplished this. She summarized by stating that the plan, as it is currently configured, substantially infringes the abutters' properties by adversely impacting privacy, blocking views and diminishing values by creating a structure that would emphasize the smaller dimensions of the abutting properties.

David Dichter, 413 Washington Street, Jeff Laskey, 18 Greenough Circle, Maydid Cohen, 15 Greenough Circle and Frank Sapienza, 425 Washnigton Street, all spoke against the proposal citing location of the elevator, diminished property value, perceived unfair comparison to decks on most of the neighboring homes, and the overall size of the Helfgot's home on their lot.

Susan Helfgot in rebuttal stated that it somehow seems inappropriate that there are houses built after hers, sort of helter skelter with no attention to space between each other, and that because she now has a side yard that is a rear yard, she is before the Board. She stated that her home is big and so are other homes. She noted that one house away, another house sits 9 feet above the ground in the back and has three stories and a dormer – putting it at 35 feet. She pointed out that this house is at least as tall as her house. She noted that the enclosed porches she referenced earlier were not on Greenough Circle but on Greenough Street. Those were allowed and she would like the same

Architecture and last dated 5/22/08, and the site plan entitled Variance Petitioner's Plan," prepared by The Jillson Co., and last dated 5/21/08, subject to the following conditions:

- 1. Prior to issuance of a building permit, final elevations of the addition shall be submitted to the Assistant Director for Regulatory Planning for review and approval, after consultation with Preservation Commission staff.**
  
- 2. Prior to issuance of a building permit, a final landscaping plan, indicating counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
  
- 3. Prior to 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; 2) final building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

The Chair then called on Michael Shepard, Building Commissioner. He stated that historically, this issue of corner lot, side yard/rear yard setback, has happened rarely, if ever, before.

Commissioner Shepard stated that the applicant was cited for the rear yard setback because of its uniqueness as a corner lot and its proximity to 3 Greenough Circle, which is sited differently. He noted that, if 3 Greenough Circle were to apply for a similar proposal, they wouldn't be before this Board. Mr. Shepard stated that he cited the petitioner for height as well. Commissioner Shepard noted that none of the properties on Greenough Circle meet the current rear lot setbacks, which only

exacerbates the proximity issue, adding that it points to the unusual character of this particular neighborhood. Commissioner Shepard stated that the Building Department supports the recommendation of the Planning Board and has no issue with the conditions recommended by the Planning Board.

Board Member, Rob DeVries stated that the house is a wonderful looking and he complimented the petitioner on the work she has performed. He asked why the elevator needs to go to the third floor. Mrs. Helfgot responded that it needs to go to the third floor to allow her husband full access to the house and his children. She believes elevator access to the third floor is reasonable. Mr. DeVries, stating that this proposal will substantially impact the neighbors, inquired if she did any design work to the two-story addition to the west side of the house and if she considered a two-story addition on the south side of the house to compliment that addition. Mrs. Helfgot replied that the two-story addition was original to the house and she questioned how they could obtain a means of egress from the third floor if the elevator only went to the second floor. Mr. DeVries responded by saying that some of the equipment on the third floor that Mr. Helfgot likes to use, could be moved to the second floor. Ms. Helfgot raised concerns of not having any egress from the third floor for her children. Mr. DeVries asked the petitioner about the counterbalancing amenities that they believe would allow the Board to grant the special permit. Mrs. Helfgot stated that they offered some changes early-on like shrinking the enclosed sunroom area in order to make the footprint smaller. She noted that idea was rejected by the neighbors. She also stated that she sent a letter to the immediate abutters, with a copy of the plans in May and had no response. She said that she also talked to Mr. Richmond to whom she made offers and suggestions, to no avail. Mrs. Helfgot stated she was willing to offer many compromises.

The Chair stated that the only way the Board can grant a special permit under these circumstances is that if they find that there are sufficient counterbalancing amenities to offset non-compliance with the zoning by-law. She added that as Attorney Walters noted, with some validity, because of the height, putting in landscaping at a lower level doesn't do it. Mrs. Helfgot responded that if the height was diminished and no longer an issue, she would imagine that landscaping as a counterbalancing amenity would improve the natural border of the properties.

Board Member, Mark Allen said that he agreed with much that had been said. He stated that there is no doubt that this is a beautiful house with a beautifully considered addition but he is not convinced that a reduction in height makes any difference to the neighbors. He noted that a special permit is perhaps not the most appropriate review process for the Board, given the bulk of the addition and the proximity of the property lines and the adjacent properties. He added that in his opinion, it may require a variance. Mrs. Helfgot responded whether a two to three foot open air easement would be considered a counterbalancing amenity. She noted that she has placed a fence well within her property line where she would be willing to grant such an easement to her neighbor. Board Member DeVries stated that one counterbalancing amenity that can be offered is the condition in which this house has been kept and the care they have taken to preserve its character.

The Chair stated that there are no grounds for a variance. She said that the only way this relief can be granted is by special permit under §5.43 and the Board must make a determination that there are sufficient counterbalancing amenities. She noted that the setback of 2 feet of the fence from the property line is a counterbalancing amenity; the landscaping; and the general care of the property should also be included. She further noted that many of the people in support and in opposition to this proposal do not have standing. She stated that only those who are really affected by light,

privacy and diminution of value of their property are persons aggrieved under the statute. She stated that she believed there are sufficient counterbalancing amenities to grant the special permit.

Mr. DeVries asked the architect if he could beautify the garage and make that an additional counterbalancing amenity. Chair Starr stated that the Board could certainly impose that as a condition subject to the review of the Assistant Director for Regulatory Planning.

The petitioner stated that she was willing to add additional trees to help screen her property.

Mr. Allen stated that, in his opinion, the biggest impact is on 3 Greenough Circle. He wondered if there was a solution toward reducing that imposition. He asked the architect if the proposal could be designed to have a more minimal impact and presence. Mr. Duckham responded that the 13 foot dimension is the magic number in order to have enough clearances for the stairs which wrap around the elevator. Chair Starr stated that she doesn't believe there is that much difference, between 13 feet and 11 feet, to the abutter. Mr. DeVries agreed with the Chair stating that the decrease of two feet would not reduce the impact like the difference between a two story verses three story addition. He stated that he is in favor of them doing something to this house. He noted, however, that he was not convinced that they have proposed the right solution. He stated that he would support granting the special permit, provided that the amenities were provided. He noted that he wanted to add to the list of amenities the improvement of the garage, the two-foot setback of her fence, "substantial" landscaping and recognition by the Board that the quality of this house exists because the money the owners have put into preserving it.

Mr. Allen responded that that he agreed with all of Mr. DeVries points but he wondered if there exists some means to lessen the impact on 3 Greenough Circle. The Chair stated that it is not up to the Board to redesign the proposal. She said that she agreed with Mr. DeVries' and if the items

proposed by him were provided as conditions, that would provide sufficient counterbalancing amenities to support a special permit.

Board Member Mark Allen asked the Chair if there were any precedent for holding something like this over, so the petitioner could make a modification to the proposal in order to lessen the impact on the abutters. Mr. Allen stated that he is nearly in harmony with the two other members of the Board but he believes that the proposal is somewhat above the threshold on its impact to the neighbors. The Chair responded they could continue the hearing without a decision so the petitioners would have time to modify the proposal if they wished.

The Board voted unanimously to continue the hearing without a finding until 24 July at 7:15 p.m.

The Board reconvened at 7:15 p.m. on 24 July, 2008. The Chair reminded everyone that the intent of the continuation was to allow the applicant time to modify the proposal if they so desired to address the concerns of Mr. Allen that the project was too imposing on the neighbors.

Attorney Peter Puciloski of Lazan Glover and Puciloski LLP, 350 Lincoln Street, Hingham, MA introduced himself as the attorney for the petitioner. Attorney Puciloski stated that he was not going to make a presentation but allow the petitioner to explain how the project was changed to meet the concerns of the neighbors.

Mr. Kurt Duckham, the petitioner's architect, described the changes for the Board. He said That they reduced the width of the addition from 13'6" to 13' thereby moving the addition 6" further away from the property line. The depth of the addition was reduced by two feet, from 22'6" to 20'6" in doing so, they reduced the overall height of the addition by 6". He said they reduced the number of windows on the neighbor's side from four windows to three and reduced the doors from four to three. They eliminated one of the steps off the side of the addition by increasing the rise of

the stair. They reduced the overall size of the accessible ramp. They added details on the second level to make it more pleasing for the neighbors. He said that their landscape architect met with the abutters on 22 July and they developed a landscape plan. He described the changes/improvements for the Board. The Chair asked whether the architect did a calculation regarding the difference in mass from the new proposal from the original. Mr. Duckham responded that the overall reduction was about 107 sf or approximately ten percent. The architect then addressed the counterbalancing amenities. He said that they added items such as improving the garage in terms of embellishments such as a roof balustrade and a trellis and additional plantings on the landscape plan, improvements to the fence, the addition of window boxes and an additional arbor and improving the existing path. Mr. Duckham cited the overall reduction in size of the addition including the reduction in glass on the elevation visible to the abutter on Greenough Circle. He said that the petitioner went to great length to ensure the addition appeared to be an original part of the house to preserve the historic integrity of the structure. Mrs. Helfgot provided a list of all the improvements done to her home over the past six years and the specific additional landscape improvements related to the addition. She said she offered landscaping on the neighbor's side of the fence but that it was not well received.

The Chair asked whether anyone wished to speak in support of the modification.

Ms. Kathy Ewen of 16 Greenough Street said she was in support of the modified addition.

The Chair then asked whether anyone wished to speak in opposition to the modified proposal.

Mr. Clint Richmond of 3 Greenough Circle, a direct abutter, summarized his concerns regarding the proposal. He said the amenities did not diminish the impact of the addition on the neighborhood, and the reduction in size was not significant in terms of negative impact. He reiterated some of his concerns from the original proposal and provided a line drawing showing the

view of the addition from his yard. He said that the addition of trees could actually increase the apparent mass of the project. He said enclosing the porch would increase the intensity of its use to his detriment given the proximity of the addition. He referenced letters from his neighbors on Greenough Circle in opposition to the proposal.

Jeffrey Lasky of 18 Greenough Circle and Suzanne Federspiel of 3 Greenough Circle, spoke of their disappointment in the revised proposal and the negative impact it would have on the neighborhood.

Attorney Ken Hoffman of Holland and Knight LLC, 10 St. James Avenue, Boston, MA said he was speaking on the behalf of a Greenough Circle neighbor. Mr. Hoffman opined that this was not a special permit case for height. He said that this case was not eligible for relief under §5.31.2 because there was no unusual characteristic to warrant its use. He said no-one has determined the height of this corner lot in relation to the mean natural grade or its relation to the property at 3 Greenough Circle. Since the only relief available in his opinion is a variance, he said he had heard no evidence to support the statutory grounds for a variance. Mr. Shepard responded that he too was concerned with the height relative to the lots, but he cited §5.31.2 because the unusual characteristic in his opinion, was the relationship of the corner lots.

The Board closed the public hearing and began deliberations.

Mr. De Vries said that he was initially concerned about the impact of the proposal on the neighbors but given the considerable counterbalancing amenities provided, he was inclined support a favorable vote for special permit relief.

Mr. Allen said that he believed the Board was in agreement about the value of the well preserved home to the community, the landscape improvements and the overall quality of the design of the addition. Nevertheless, he said the petitioner was asked to come back with a reduction in the

footprint or a meaningful reduction in height of the addition. He said both of the suggested reductions were intended to reduce the imposition on the 3 Greenough Street property. He said the modified plan had no meaningful reduction in the width or the height and a very modest reduction to the length of the addition. He said on that basis he was opposed to the granting of relief for the proposal.

The Chair stated that she would support the relief in the form of a special permit under §5.43 because she is convinced that the counterbalancing amenities were substantial and in her opinion more than enough to compensate for the zoning relief that the petitioner seeks. She would support the granting of a special permit relative to height because she felt relief under §5.31.2 was appropriate and she would support a special permit under §8.02.2, alteration of a pre-existing, non-conforming dwelling.

The vote of the Board was De Vries - yes, Starr - yes and Allen - no. Therefore, the requested relief is denied.

  
Enid Starr

RECEIVED  
TOWN OF BROOKLINE  
REGISTRARS OF VOTERS

Filing Date: August 22, 2008

A True Copy  
ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals