



BOARD OF APPEALS
Jesse Geller, Co-Chair
Jonathan Book, Co-Chair
Christopher Hussey

Town of Brookline

Massachusetts

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Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2014-0033
Owner: Robert and Marjie Kargman

Petitioners, Robert and Marjie Kargman, applied to the Zoning Board of Appeals to legalize an existing side-yard fence that exceeds 7 feet tall at 292 Warren Street. The petitioners were cited for the non-conforming fence height by the Building Department and a legalization request was taken to this Board.

The Board administratively 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 October 2, 2014 at 7:30 p.m. in the Selectmen's hearing room as the time and place of a hearing on the request. Notice of the hearing was mailed to the Petitioner, to their attorney 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 September 11, 2014 and September 18, 2014 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. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

292 WARREN ST – LEGALIZE FENCE IN SIDE YARD EXCEEDING ALLOWABLE HEIGHT in an S-40, Single-Family, residential district, on October 2, 2014, at 7:30 PM in the 6th Floor Selectmen's Hearing Room (Petitioner: Robert L. Allen; Owner: BARTLETT TR EDWARD J JR)

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

- 1. Section 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.60: Side Yard Requirements**
- 3. Section 5.62: Fences and Terraces in Side Yard**

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

*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 Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneirson@brooklinema.gov.***

*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

Publish: September 11, 2014 & September 18, 2014

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. Attorney, Robert Allen, presented the case on the petitioners' behalf.

Mr. Allen represented 292 Warren Street as a 2-story stucco house situated on a 2.4 acre rear lot half way between Warren and Sears Road and connected by a long right-of-way to Dudley Street. The Renaissance Revival style house was constructed in 1907 and designed by architects Winslow and Bigelow and has had several additions since then by special permit.

The petitioners are proposing to legalize the existing fence on the property. The height of the fence in places is greater than 7', which is above the allowed height limit within the side yard setback. This fence is located on a portion of the side property line.

The Chairman asked if anyone wished to speak in favor or in opposition of the proposal. No one spoke in favor of the proposed relief. Three residents spoke in opposition to the proposal.

The Chairman called upon Timothy Richard, planner, to deliver the comments of the Planning Board:

FINDINGS

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements

Section 5.62 – Fences and Terraces in the Side Yard

Dimensional Requirements	Required/Allowed	Proposed	Relief
Fences in Side Yards	7'	7'+	Special Permit*

* Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicant has indicated they will provide landscaping as a counterbalancing amenity.

* Under **Section 5.62**, the Board of Appeals may allow a special permit to allow fences over 7' high where it is determined that it is warranted to mitigate noise or other detrimental impact or provide greater safety, such as when a property is bounded by active train tracks.

Mr. Richard said the Planning Board does not support relief for allowing a fence greater than 7' high within the side yard setback. A 7' fence as measured from the lowest adjacent natural grade would have served adequately to screen the yards from each other and would have complied with the Zoning By-Law.

Therefore, the Planning Board recommended denial of the site plans by Reed Hilderbrand Associates Inc., dated 1/12/05.

Mr. Richard noted that if the Board does find that this proposal meets the necessary conditions to receive a special permit, the Planning Board recommended the following conditions:

1. Prior to the issuance of a building permit, a final landscaping plan shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the 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; 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman called upon Michael Yanovitch, to deliver the comments of the Building Department. Mr. Yanovitch said the Building Department consistently measures fence height from the lowest natural grade, the abutting property owner's yard in this case. Resulting measurements exceeded 7 feet tall in multiple locations.

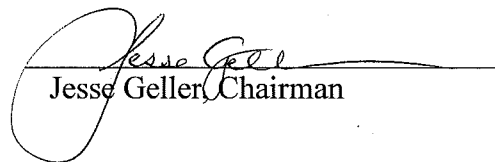
The Board deliberated on the merits of the relief requests. The Board voted unanimously that the requirements have not been met for the issuance of a special permit under Sections, 5.43, 5.60, 5.62 and 9.05 of the Zoning By-Law. The Board made the following specific findings pursuant to said Section 9.05:

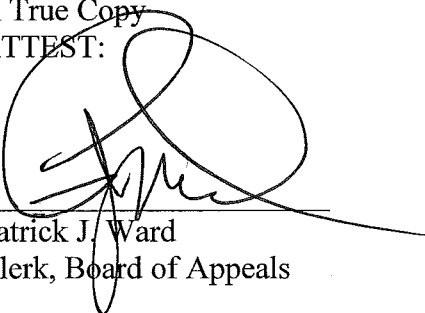
- a. The specific site is not an appropriate location for such a use, structure, or condition.

Accordingly, the Board voted unanimously to deny the requested relief.

Unanimous Decision of
The Board of Appeals

Filing Date: 11/12/14


Jesse Geller, Chairman

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals

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