



**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Christopher Hussey  
Jonathan Book

# *Town of Brookline*

## *Massachusetts*

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043  
Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2015-0068  
OWNER: KAY LIN  
14 HARVARD PLACE, BROOKLINE, MA

Petitioner, Kay Lin, applied to the Building Commissioner to change the use of a residential unit to include in-home tutoring at 14 Harvard Place. The application was denied and an appeal 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 February 4, 2016 at 7:00 p.m. in the Selectmen's Hearing Room as the time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, 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 January 21, 2016 and January 28, 2016 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:

**14 HARVARD PL – CHANGE USE OF RESIDENTIAL UNIT TO INCLUDE IN-HOME TUTORING in an M-1.0, Apartment House, zoning district, on February 4, 2016, at 7:00 PM in 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner/Owner: KAY LIN) Precinct 7**

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

**1. Section 4.07: Table of Use Regulations, Use #60**

*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](http://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 Sneurson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at [rsneurson@brooklinema.gov](mailto:rsneurson@brooklinema.gov).***

*Jesse Geller, Chair  
Christopher Hussey  
Jonathan Book*

**Publish: January 21, 2016 & January 28, 2016**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Board Chairman Jesse Geller and Board Members Jonathan Book and Mark Zuroff. Property owner Kay Lin of 14 Harvard Place, Brookline, MA, presented project details to the Board. Ms. Lin stated that she owns and operates the Lin Learning Center located at 32 Harvard Street. Ms. Lin stated that she has a lease agreement with the Korean Church of Boston to utilize a portion of their facilities at that location to operate an after-school learning program for local students ranging in age from 6-12 years old. Ms. Lin stated that pupil enrollment is small but she hopes to expand her business in the future. Ms. Lin confirmed that her lease

agreement with the church only runs through the academic year and she is unable to utilize this space during summer months. For this reason, Ms. Lin is requesting to utilize the ground floor of her home at 14 Harvard Place to provide in-home tutoring for the months of June and July. Ms. Lin stated that this request to permit an in-home office use will allow her to continue programming through the summer and test her summer curriculum in a manner that does not require significant cost to lease a commercial property.

Ms. Lin also stated that she has completed a significant amount of renovation of the two-family structure located at 14 Harvard Place, and she expects to gain her certificate of occupancy in the near future.

Board Member Jonathan Book questioned if Ms. Lin intends to utilize her private home for tutoring use only for this temporary summer period. Ms. Lin stated that she hopes to expand her enrollment at the church and/or in a future commercial space and only intends to use her home for tutoring purposes for a limited period of time this summer.

Mr. Book requested additional detail regarding enrollment, staffing, and transportation. Ms. Lin stated that five (5) pupils are currently enrolled in the program and two other adults assist with tutoring. Ms. Lin also stated that Lin Learning Center staff members pick up pupils after school from both the Pierce and Lawrence Elementary Schools but parents do pick up their children following the program (approximately 6:00PM).

Board Chairman Jesse Geller asked whether the Petitioner discussed this in-home tutoring proposal with abutting residents prior to this hearing. Ms. Lin stated that she did not contact abutting residents directly regarding the in-home tutoring but she has discussed ongoing renovation work with neighbors.

Board Chairman Geller called for public comment in favor of the Petitioner's proposal.

Wendy Friedman of 322 Walnut Street stated that her daughter participates in the Lin Learning Center after school program currently located at 32 Harvard Street. Ms. Friedman stated that it is challenging to find after school programming in Brookline. Ms. Friedman believed that the Learning Center provides an important and affordable service that assists students. Ms. Friedman also encouraged the Board to support a growing small business that is operated by a local resident. Ms. Friedman stated that her daughter enjoys the after school program and she believed this in-home temporary summer program to be a very low impact proposal.

Board Chairman Geller called for public comment in opposition to the Petitioner's proposal.

Aaron Williams of 29 School Street stated that he has a few concerns about the proposed in-home tutoring. Mr. Williams stated that the immediate neighborhood is a "residential enclave" within the M-1.0 zoning district that is bookended by busy commercial activity and he is opposed to any change in the zoning designation of the zoning district. Mr. Williams stated that many families live off of Harvard Place and vehicular access is narrow. Should the Board approve the requested relief, Mr. Williams supported conditions that would limit the number of students and time period of the in-home tutoring, particularly to maintain vehicular safety and the residential character of the neighborhood.

Board Chairman Geller clarified that the Petitioner is not seeking to change the zoning designation of the neighborhood or the 14 Harvard Place lot, but rather seeking a special permit to establish the in home tutoring use (Use #60 – Customary Home Occupation).

Mercedes Hawkins of 29 School Street stated that the Petitioner has engaged in property renovation over the last four to five months and never communicated her intention to request the in-home tutoring. Ms. Hawkins noted that the Lin Learning Center website refers to the program as a full-time daycare as opposed to after school tutoring. Ms. Hawkins agreed that additional vehicular activity on Harvard Place presents a safety issue. For these reason, if the relief is granted Ms. Hawkins supported a condition prohibiting pupil pick-up and drop-off on this private way.

Pablo Alvarez of 20 Harvard Place stated that he does not support a change in zoning and stated that the entire first-floor residential unit at 14 Harvard Place would be used for the tutoring purposes.

Ellen Katz of 16 Harvard Place stated that she supported prior comments. Ms. Katz also submitted a letter signed by various neighborhood residents in opposition to the proposed in-home tutoring to the Board (Exhibit A).

Board Chairman Geller requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board.

### **FINDINGS**

#### **Section 4.07 – Table of Use Regulations, Use #60**

A special permit is required to establish an accessory home occupation within the M-1.0 district if customers or pupils come to the house for business or instruction.

Mr. Rosa stated that the Planning Board unanimously supported the proposed in-home tutoring. Board Members believed that the impact of this short-term in-home tutoring will be minimal and the use requires no exterior modification to the structure. Mr. Rosa confirmed that Planning Board Members did agree that vehicular pick up and drop off should not occur on Harvard Place to limit activity on the narrow private way. Therefore, the Planning Board recommended approval of the first floor diagram submitted by Kay Park, dated 12/17/2015, and

the site plan submitted by Antoni Szerszunowicz, dated 12/9/2015, subject to the following conditions:

1. Vehicular pick-up and drop-off shall not occur on Harvard Place.
2. Tutoring hours of operation shall be 9 am to 1 pm, Monday through Friday, for the months of June and July. The number of students shall be limited to six at one time.
3. The applicant shall return to the Planning Board for review within one year.
4. 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 first floor plan; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Board Chairman Geller requested that Mr. Rosa also review the findings of the Building Department. Mr. Rosa stated that the Building Department also has no objection to the relief as requested. Mr. Rosa stated that the Petitioner worked closely with both Building and Preservation staff to restore this two-family dwelling in a modest and historically appropriate manner. Mr. Rosa also reiterated that no zoning change is requested and the proposed in-home use requires special permit relief only. Mr. Rosa agreed that a sunset provision for in-home office uses is common and appropriate in this instance however this future review, if approved, should occur before the Zoning Board of Appeals rather than the Planning Board as recommended in Condition #3. Mr. Rosa concluded by stating that should the Board find that the standard for the grant of a special permit is satisfied, the Building Department will work with the Petitioner to ensure compliance with imposed conditions and building codes.

The Board deliberated on the merits of special permit relief as requested. Board Member Mark Zuroff characterized this proposal as a "limited use change." Mr. Zuroff noted that the in-home tutoring service would be a summer program rather than an after school program. As such,

the pick-up and drop-off procedures are particularly relevant. Mr. Zuroff also clarified that any granted relief would permit in-home tutoring from June through July of 2016 only. Mr. Zuroff questioned what the Petitioner intends to do in August and when the school year resumes in September.

Ms. Lin stated that no tutoring will take place in August and she has a lease agreement with the Korean Church of Boston to resume after school tutoring at 23 Harvard Street from September 2016 through June 2017. Ms. Lin confirmed that she does not intend to request further in-home tutoring for the summer of 2017 at this time.

Mr. Zuroff stated that the proposal is limited in scope and believed that adequate controls are in place to limit time, vehicular activity, and the number of pupils but Mr. Zuroff expressed concern that this proposal was not communicated to abutting residents prior to this hearing. Mr. Zuroff was also satisfied that any in-home tutoring use at 14 Harvard Place beyond July of 2016 requires that the Petitioner re-apply for special permit relief and come before the Board for review. Mr. Zuroff supported the recommendation that vehicular pick-up and drop-off not occur on Harvard Place.

Board Chairman Geller questioned if the Petitioner owns the entire two-family structure and if so, does she intend to rent either of these residential units to a tenant when in-home tutoring is not in place. Ms. Lin confirmed that she does own both residential units located at 14 Harvard Place and she does not intend to rent either of these units to a tenant.

Mr. Geller believed that this proposed use of the two-family structure results in a relative “wash” in terms of net occupancy for the structure. Mr. Geller agreed that this proposal should have been communicated to abutting residents but believed that recommended conditions effectively cap the number of students, hours of operation, and the time period of the tutoring

program. Mr. Geller also believed that the standards for the grant of a special permit, as outlined in Zoning By-Law **Section 9.05**, are satisfied. Mr. Geller stated that this Section of the By-Law is intended to limit negative impacts. Mr. Geller characterized the limited in-home tutoring as a “soft use” that will not adversely impact the neighborhood, nor alter the zoning designation of the subject property.

Mr. Zuroff recommended that Condition #1 be modified to require notification to all parents preventing vehicular drop-off and pick-up on Harvard Place.

Board Member Book concurred with Mr. Zuroff and Mr. Geller’s comments. Mr. Book clarified that any granted special permit relief would expire at the end of July 2016, requiring re-application for special permit relief if the Petitioner wishes to provide in-home tutoring beyond this expiration date.

The Board voted unanimously that the requirements have been met for the issuance of a special permit under **Sections 9.05** of the Zoning By-Law, granting relief from the provisions of **Sections 4.07 – Table of Use Regulations, Use #60**. The Board made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

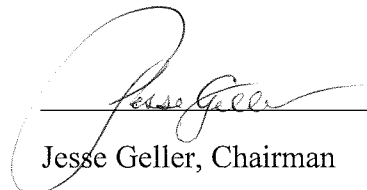
- The specific site is an appropriate location for such a use, structure, or condition.
- The use as developed will not adversely affect the neighborhood.
- There will be no nuisance or serious hazard to vehicles or pedestrians.
- Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- 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 special permit relief, subject to the following revised conditions:

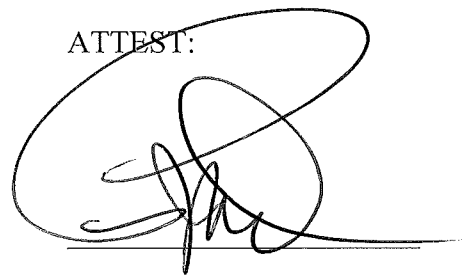
1. Vehicular pick-up and drop-off shall not occur on Harvard Place. The Lin Learning Center shall provide notice of this restriction to all parents of pupils enrolled in the tutoring program.
2. Tutoring hours of operation shall be 9 am to 1 pm, Monday through Friday, for the months of June and July. The number of students shall be limited to six at one time.
3. The applicant shall return to the Zoning Board of appeals for review within one year if the Petitioner wishes to re-establish the in-home tutoring use beyond August 1, 2016.
4. 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 first floor plan; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous decision of the  
Board of Appeals

  
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Jesse Geller, Chairman

Filing Date: 3/8/16

A True Copy

ATTEST:  
  
\_\_\_\_\_  
Patrick J. Ward

Patrick J. Ward  
Clerk, Board of Appeals

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