



# Town of Brookline Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
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Patrick J. Ward, Clerk

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2016 OCT 20 A 11:29 AM

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2015-000067  
NEERAJ AGRAWAL  
28 FERNWOOD ROAD, BROOKLINE, MA

Petitioner, Neeraj Agrawal, applied to the Building Commissioner for permission to construct a tennis court in the rear yard. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed September 15, 2016 at 7:00 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, to their 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 September 1, 2016 & September 8, 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: 28 FERNWOOD RD – Construct a tennis court in the rear yard in a S-40 (Single-Family) residence district, on September 15<sup>th</sup>, 2016 at 7:00pm in 6<sup>th</sup> Floor Selectmen's Hearing Room (Petitioner/Owner: Neeraj Agrawal) *Precinct 14*.

- 1. Section 4.04.2: Limitation of Area of Accessory Uses**
- 2. Section 5.43: Exceptions to Yard and Setback Regulations**
- 3. Any Additional Relief The Board May Find Necessary**

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:

*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 programs and services of the Town of Brookline are invited to make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at [llgellineau@brooklinema.gov](mailto:llgellineau@brooklinema.gov)*

***Jesse Geller, Chair***  
***Christopher Hussey***  
***Jonathan Book***

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Jonathan Book and Board Members Johanna Schneider and Kate Poverman. Planner and Zoning Coordinator, Ashley Clark was also present at the hearing. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was the Petitioner, Neeraj Agrawal, along with project architect Tom Lee, TL Studio, 35B North Main, Falmouth, MA 02540.

Chairman Book called the hearing to order at 7:15 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that 28 Fernwood is located in S-40 District. Attorney Allen stated that the subject property is the result of a 2014 subdivision which created 26 Fernwood Road, 28

Fernwood Road, and 181 Clyde Street. Attorney Allen stated that the original home was demolished and 28 Fernwood has been issued a building permit to construct a new single family home. Attorney Allen indicated that the home will be built in accordance with the Zoning By-Law. He stated that the Petitioner seeks relief to construct a tennis court in the rear yard. Attorney Allen stated that the subject property abuts The Country Club (191 Clyde Street) at the rear. Attorney Allen noted that there is a significant landscaping buffer on The Country Club's property which will be further buffered by the Petitioner's proposed landscaping plan.

Architect Tom Lee stated that the tennis court occupies over 25 percent of the required rear yard area. He stated that the court will be 114 feet by 56 feet in size which is 39 percent of the rear yard area. He stated that that an existing stone wall is located at the rear of the property and will be preserved as well as a number of existing trees.

Attorney Allen stated that there is a 10 foot distance between the subject property and 191 Clyde Street, to contain sound and light. Attorney Allen reiterated that the proposed tennis court occupies over 25 percent of the rear yard setback in the district which is 50 percent in the S-40 District. He further stated that under **Section 5.43** of the Zoning By-law, the Board of Appeals may waive by special permit, yard requirements if a counterbalancing amenity is provided. He indicated that while a few abutting properties are unoccupied, the proposed landscaping plan is placed around the court's perimeter as buffering in anticipation of future occupancy.

Board Chairman Book asked if the tennis court has been designed to address sound, and referenced a letter from an abutter expressing concern over sound and requesting that a solid 10' to 12' fence be installed around the tennis court. Attorney Allen stated that a solid fence would

exacerbate any sound issues by creating an echoing effect, and that tennis court experts recommend an open fence at a 10' height.

Attorney Allen then discussed special permit relief under Section 9.05 of the Zoning By-Law arguing: (1) the specific site is an appropriate location because the tennis court is located at the rear of the property and there is ample screening both existing and proposed (2) there will be no adverse effect on the neighborhood where the tennis court will not be visible from the street. The Applicants propose dense screening including a proposed fence, an existing stone wall, and landscaping. Additionally, the immediate, and only abutter to the rear, is The Country Club which is supportive of the proposal.; (3) there will be no nuisance or serious hazard to vehicles or pedestrians because the site has a substantial lot size (55,059 s.ft.) and the proposed accessory structure will be at the far rear of the property. Furthermore, a 10 ft. tall practice wall will be incorporated to mitigate any potential, but unanticipated hazards; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) the development will have no effect on the supply on housing available for low and moderate income people.

Board Chairman Book called for public comment in favor of, or in opposition to, the Petitioner's proposal. A City of Boston resident who identified herself as Karen of Babcock Street expressed concern about the abutting vacant lot and how vibrational noise will affect that property. Board Chairman Book stated that abutters (including the owner of the vacant lot) have received public notice regarding the proposal and have had an opportunity to speak out in favor or against the proposal. Attorney Allen stated his client is landscaping the area in anticipation of potential development on the vacant lot.

Ms. Clark delivered the findings for the Planning Board:

**FINDINGS**

**Section 4.04.2 – Limitation of Area of Accessory Uses**

No accessory use or uses not within a building shall occupy more than a combined total of 25 per cent of the unbuilt lot area, or of the required rear yard area, other than required off-street parking.

	<b>Rear Yard Area</b>	<b>Allowed Use Area</b>	<b>Proposed Used Area</b>	<b>Finding</b>
<b>Accessory Use</b>	8,142 sq. ft. (100%)	2,036 sq. ft. (25%)	3,195 sq.ft. (39%)	<u>Special Permit</u>

**Section 5.43 – Exceptions to Yard and Setback Regulations**

Under Section 5.43, the Board of Appeals may waive by special permit yard and/or setback requirements if a counterbalancing amenity is provided.

Ms. Clark stated that the Planning Board supports the tennis/multi-use court as an accessory structure on this property. The Planning Board felt that the court will have limited impact, if any, on neighbors due to the large lot sizes and heavily wooded areas. She stated that the Planning Board noted that the Applicant has provided ample landscape counterbalancing amenities surrounding the tennis court. Therefore, the Planning Board recommended approval of the site plan “Fernwood Residence” by TL Studio, Inc,” dated 6/6/16, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations indicating all dimensions and materials subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Tennis court lighting will be reviewed prior to the issuance of a Certificate of Occupancy to ensure its conformance with the zoning requirements.
3. Prior to the issuance of a building permit, a final landscaping plan shall be submitted for review and approval, to the Assistant Director of Regulatory Planning.
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 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.

Chairman Book requested that Ms. Clark deliver the findings of the Building Department. Ms. Clark stated that the Building Department had no objection to the relief as requested and should relief be granted, will work with the Petitioner to ensure compliance.

In deliberation, Board Member Schneider stated that the tennis court and the dense landscaping proposed are well intentioned. She stated that there will be no impact on the public realm or the neighboring properties. Chairman Book and Board Member Poverman concurred.

The Board then determined, by unanimous vote that the requirements for a special permit for **Section 4.04.2** of the Zoning By-Law pursuant to **Sections 5.43** and **9.05** of the Zoning By-Law were met. The Board made the following specific findings pursuant to said **Section 9.05**:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no 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. Development will not have any 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:

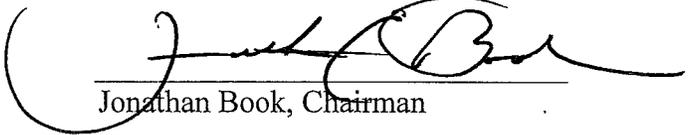
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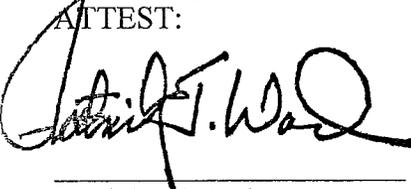
Unanimous Decision of  
The Board of Appeals

Filing Date: 10/20/16

  
Jonathan Book, Chairman

A True Copy

ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals