



# Town of Brookline Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

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Brookline, MA 02445-6899  
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Patrick J. Ward, Clerk

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2017 SEP 15 A 11:38

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2017-0007  
4 FISHER AVENUE  
KAUL RINA, GUPTA NAREN

Petitioner, Naren Gupta, applied to the Building Commissioner for permission to install a fence on a retaining wall in the front yard. 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 certified by the Board of Assessors of the Town of Brookline and fixed August 31, 2017 at 7:20 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 August 17, 2017 and August 24, 2017 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:

4 Fisher Avenue – Install a fence on a retaining wall in the front yard in S-7 (Single Family) Residence District, on AUGUST 31, 2017 at 7:20 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner/Owner: Naren Gupta) Precinct 14

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 5.43: Exception to Yard and Setback Regulations
2. Section 5.52: Fences and Terraces in the Front Yard
3. Any additional relief the Board may find 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*

Publish: August 17, 2017 & August 24, 2017

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Johanna Schneider and Board Members Lark Palermo and Chris Hussey.

The case was presented by the Petitioner, Naren Gupta.

Chairman Schneider called the case forward to order at approximately 7:20 p.m. Mr. Gupta waived the reading of the public notice.

Mr. Gupta stated that the home is located in an S-15 residential zoning district on the corner of Fisher Avenue and Boylston Street. He described the intersection as heavily trafficked. Mr. Gupta stated that largely due to the fast traffic that runs along Boylston, the salt spray is killing their existing Cypress trees by landing on the limbs as high up as seven feet. Mr. Gupta stated that he would like to address the salt spray issue with a fence to separate the trees from the salt spray.

Mr. Gupta stated that his direct abutters are in support and added that the proposal will improve the pedestrian experience as it is currently interrupted by the jagged braches.

Mr. Gupta then described the zoning relief being requested. Mr. Gupta stated that Section 5.52 of the Zoning By-Law states that fences in the front yard setback cannot be above six feet above the natural grade. Mr. Gupta stated that the fence he is proposing to protect the existing trees ranges from 5'8" to just under 11', which includes the height of an existing stone retaining wall. Therefore, Mr. Gupta stated, he is requested relief for the front yard setback pursuant to Section 5.43 of the Zoning By-Law.

In regards to the required counter balancing amenity Mr. Gupta argued the fence itself acts as a counter balancing amenity for the following reasons: 1) the fence will preserve the existing trees; 2) it will improve the pedestrian experience; 3) the fence will be made of high quality materials that will be visually appealing.

Mr. Gupta then stated that the Board must find the proposal meets the requirements listed under Section 9.05 of the Zoning By-Law. Mr. Gupta then reviewed how the proposal meets those requirements. Mr. Gupta stated that: (a) two letters have been submitted to the Board from landscape architects which testify that the specific site of the fence is an appropriate location to protect the trees (b) use not adversely affect the neighborhood (c) the fence will in fact improve the pedestrian experience and not be nuisance or serious hazard to vehicles or pedestrians (d) will not affect the availability of affordable housing. Mr. Gupta stated that he would therefore request that the Board grant his request for relief to construct a fence.

Board Member Hussey noted the map produced by the Assessor's Department indicates the relationship the corner lot has to Boylston Street and the direction of traffic. Mr. Hussey stated that it supports the town engineer's position that the fence does not pose a safety concern for sight lines.

Chairman Schneider noted that there was no one present in the audience to submit comments either in support of or opposition to the proposal.

Ashley Clark, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board:

**FINDINGS**

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

**Section 5.52 – Fences and Terraces in the Front Yard**

<b>Fence Height</b>	<b>Allowed</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Height</b>	< 6 feet	20” to 5 feet (Stone wall only)	5’8” to 11 feet (Stone wall and fence)	Special Permit*

*\* Under Section 5.43 setback requirements may be substituted if a counterbalancing amenity is provided*

**Section 5.43 – Traffic Visibility Across Corners**

In any district where a front yard is required, no structure, fence, planting or other structure shall be maintained between a plane two and one-half feet above curb level and a plane seven feet above curb level so as to interfere with traffic visibility across the corner within that part of the lot which is within a triangle bounded by the street lot lines and, a straight line drawn between points on each such lot line 25 feet from the intersection of said lot lines or extension thereof, except if the Director of Transportation determines that no safety hazard will result, such as from a fence or plantings that allows adequate visibility. The Planning Department conferred with the Director of Transportation and Engineering who has no safety concerns with this proposal.

Ms. Clark stated that the Planning Board is supportive of this proposal for a fence. She noted that the Board is sympathetic to the concerns about the hedges which are currently dying and brown. Ms. Clark stated that the fence will be an aesthetic improvement to this property which fronts along Boylston Street. Ms. Clark stated that the home is already blocked from view by dense plantings, so the fence is not expected to alter this existing condition dramatically. Further, Ms. Clark added, the fence will improve sidewalk access as the existing shrubs currently hang low and interfere with pedestrians; this improvement counterbalances the reduction in the front yard setback, therefore provides the same standard of amenity to nearby properties as would have been provided by compliance with the regulations of the By-law. Ms. Clark stated that the Board feels the fence will not interfere with sight lines because it is located on the west side of the intersection on a divided highway where traffic can only turn right out of Fisher Avenue and therefore cars do not require visibility around this corner.

Therefore, Ms. Clark stated, the Planning Board recommends approval of the site plan dated 5/5/2017 by Clifford Rober and the fence diagram by Colonial Fence Company that shows a stepdown from 6 feet to 4 feet midway through the fence subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan and fence dimensions, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit the proposed materials to serve as the counter balancing amenity, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. 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 floor plans and 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.

Ms. Clark then delivered the comments of the Building Department. Ms. Clark stated that the Building Department has no objection to the requested relief and should the Board of Appeals find that the necessary requirements for special permit relief are met, the Building Department will work with the Petitioners to ensure compliance with all building codes.

The Board then deliberated on the merits of the proposal. Chairman Schneider was in favor of granting the requested relief and recommended an amendment to condition number three of the proposed Planning Board conditions to remove the section stating: "final floor plans and building elevations stamped and signed by a registered architect." Board Members Hussey and Palermo were in favor of the relief as well as the amendment to the proposed conditions.

The Board then determined, by unanimous vote that the requirements for relief by special permit from the application of the provisions of **Section 5.52** by way of **Section 5.50** of the Zoning By-Law pursuant to **Sections 5.43** and **9.05** of the Zoning By-Law as requested by the Petitioners were met. The Board made the following specific findings pursuant to said **Section 9.05**:

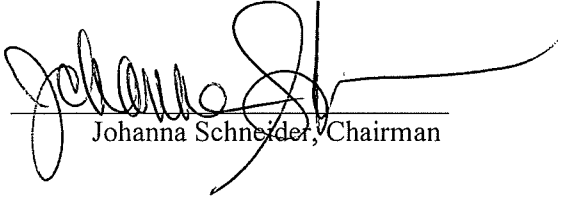
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.

- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will have no 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 revised conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan and fence dimensions, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit the proposed materials to serve as the counter balancing amenity, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

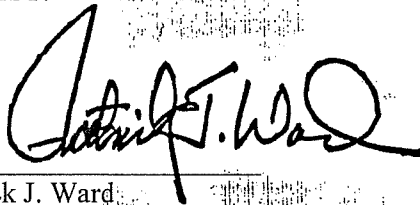
Unanimous Decision of  
The Board of Appeals



Johanna Schneider, Chairman

Filing Date: 9-15-17

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals