



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

Town Hall, 1st Floor
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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

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2017 NOV 10 A 9:35

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0020
47 STETSON STREET
CARLO GIOVANNI TRAVERSO
TRUSTEE

Petitioners, Lewis Berk and Lucila Halperin, applied to the Building Commissioner for a building permit to construct a fence in the rear yard at 47 Stetson Street. 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 October 26, 2017 at 7:00 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for appeal. Notice of the hearing was mailed to the Petitioners, 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 October 12, 2017 and October 19, 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:

47 STETSON STREET, BROOKLINE, MA 02446 - Construct fence in rear over seven feet in a(n) T-5 TWO-FAMILY & ATTACHED SINGLE-FAMILY on 10/26/2017 at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: TRAVERSO TR, CARLO GIOVANNI) Precinct 2

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:

§5.74 - FENCES AND TERRACES IN REAR YARDS

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.

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

*Jesse Geller, Chair
Christopher Hussey
Mark Zuroff*

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 Chris Hussey and Jonathan Book. The case was presented by the Petitioner, Lew Berk. Chairman Jesse Gellar called the case forward at approximately 7:00 p.m.

Mr. Berk stated he and his wife, Lucile Halperin, are the sole beneficiaries of a trust that owns the property at 47 Stetson Street, Brookline, Massachusetts.

Mr. Berk stated that they have lived in the single-family home in this T-5 zoning district together for 12 years. Mr. Berk described the neighborhood as a mix of single-family homes and multifamily apartment buildings and noted that the rear abutter, 222 Freeman Street, is a multifamily apartment building with a large surface level parking lot that runs along the rear property line of his property.

Mr. Berk stated that they would like to construct an eight foot fence along the rear property line and that this proposal requires a special permit, which he believes is available under **Section 5.74** of the Zoning By-Law. He further stated that in order for the Board to grant relief under this section, the Board must find that the fence is needed to mitigate noise or other detrimental impact and argued that the parking lot to the rear produces a lot of spill over light and noise, which has been exacerbating by ongoing construction on the property. Mr. Berk continued that the added height of the fence will help address these detrimental impacts. Mr. Berk submitted a letter from the abutter at 222 Freeman Street evidencing full support of an eight foot high fence. Mr. Berk stated that the fence will not have an impact on the side yard abutters since the added height is only along that section of fence along the rear property line.

Mr. Berk noted that the Planning Board reviewed the proposal on September 28, 2017 and were pleased the material to be used for the fence would be wood and that the Planning Board was unanimously in support of the fence.

Mr. Berk then described relief under **Section 9.05** of the Zoning By-Law stating: (1) the specific site is an appropriate location for the proposed use; (2) the fence will only be viewed by the residents at the rear and themselves and therefore the increase in height will not adversely affect the neighborhood; (3) there will be no nuisance or serious hazard to vehicles or pedestrian since the fence will be professionally installed in a location far from both; (4) adequate and

appropriate facilities will be provided for the proper operation and proposed use; and (5) there will be no effect on the supply of housing available.

Mr. Berk then requested that the Board of Appeals grant the special permit relief as requested under Sections 5.74 and 9.05 of the Zoning By-Law.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in favor of the application. No one spoke in favor of the proposal. Mr. Geller asked if anyone wished to speak in opposition to the application. No one spoke in opposition to the proposal.

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

FINDINGS

Section 5.74 – Fences and terraces in rear yards

Fence Height	Allowed	Existing	Proposed	Finding
Height (right side)	7'	7'	7'	Complies
Height (rear)	7'	7'	8'	Special Permit*

*The Zoning Board of Appeals may allow a fence to exceed 7 feet at the rear by Special Permit if it can determine that it is warranted to mitigate noise or other detrimental impact.

Ms. Clark stated that the Planning Board is supportive of this proposal for an eight foot high fence at the rear of this home. She continued that the noise from ongoing construction as well as the general use of the parking lot would be mitigated by the added height. Additionally, Ms. Clark noted that the applicant submitted a letter of support from the rear abutter at 222 Freeman Street LLC that evidences they are in full support of the application.

Therefore, Ms. Clark stated, the Planning Board recommends approval of the site plan dated 2/14/2000 by Michael Prodanou Associates to construct a fence at the rear, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit (3) final site plans 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 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 architect; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Ms. Clark recommended that the Board amend the first condition to require a PDF file for final submission, and to amend the second condition to only require evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Deputy Building Commissioner Mike Yanovitch to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to this request.

The Board deliberated on the merits of the proposal. Board Member Book stated that the proposal was in line with the requirements for a special permit under the Zoning By-Law and that he was in support of granting the request relief, subject to the proposed amended conditions. Board Member Hussey concurred. Chairman Geller stated that he thinks the proposal meets the requirements of **Sections 5.74** and **9.05**.

After deliberating on the merits of the request for special permit relief, the Board voted unanimously that the requirements have been met for the issuance of a special permit pursuant to **Sections 5.74** and **9.05**, subject to the following amended conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a PDF file indicating 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 to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

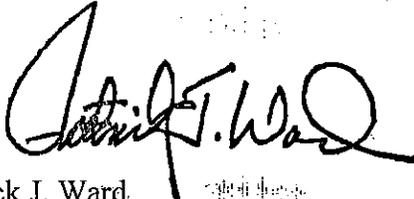
Filing Date: 11-10-17



Jesse Geller, Chairman

A True Copy

ATTEST:



Patrick J. Ward

Clerk, Board of Appeals