



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

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

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2017 NOV 28 A 9 10

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2017-0025
21 KENT STREET
RINNE MIKAEL L & TIFFANY W

Petitioners, Tiffany and Mikael Rinne, applied to the Building Commissioner for a building permit to legalize a fence in the rear yard at 21 Kent 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 November 2, 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 19, 2017 and October 26, 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:

21 KENT STREET, #_CONDOMAIN, BROOKLINE, MA 02445 - Legalize fence over 7 feet in the rear yard in a(n) G-2.0 GENERAL BUSINESS on 11/02/2017 at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Tiffany Rinne) Precinct 4

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*

Publish: 10/19/2017 & 10/26/2017

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 Mark Zuroff. The case was presented by the Petitioner, Mikael Rinne. Chairman Jesse Geller called the case forward at approximately 7:00 p.m.

Mr. Rinne stated that he and his wife have lived at the subject property for 21 years and have spent the last year working on remodeling the home and backyard. He noted that part of this project was the addition of a deck and the replacement of a fence at the rear of the property. Mr. Rinne explained that they relied on a fencing company to install the fence to the correct dimensions, however, upon final inspection it was brought to their attention that the fence was

above the allowed height under the Zoning By-Law of six feet. He added that the fence is desired to provide privacy and mitigate noise since the property abuts a public alleyway along Andem Place that has a lot of foot and vehicular traffic. Mr. Rinne further stated that they need relief pursuant to **Section 5.74** of the Zoning By-Law. Finally, Mr. Rinne submitted a letter of support for the height of the fence from the resident at 17 Kent Street.

Upon inquiry from Board Member Zuroff, Mr. Rinne stated that he was not aware if the fence company knowingly installed the fence above the allowed height.

Upon inquiry from Board Member Hussey, Mr. Rinne explained the need for a raised deck due to the grading of the lot that slopes down toward Andem Place.

Chairman Geller confirmed with the Petitioner that the portion of the fence that exceeds the allowed height is along a small section of the fence in the rear yard.

Mr. Geller asked if anyone wished to speak in favor of the application. Mr. John Kronenberger, resident of 17 Kent Street, spoke in support of the proposal.

Zoning Board of Appeals Chairman 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	Finding
Height (rear)	7'	8' 7"	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 legalizing this fence at the rear of this home. She noted that in 2016, the Planning Board supported the applicant's proposal to make significant changes to the property and the resulting landscaping improvements were a condition of that project and therefore, the Board is happy to see this work undertaken. Ms. Clark further stated that the request for a fence above the maximum allowed height is reasonable due to the property's location in a business district abutting a public parking lot and the rear yard's proximity to a paved parking area. She noted that the Petitioners have the support of their abutter at 17 Kent Street.

Therefore, Ms. Clark stated, the Planning Board recommends approval of the site plan dated 12/2/2015 by Robert G. Babcock, subject to the following condition:

1. 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 and felt the requirements under **Section 5.74** of the Zoning By-Law have been met. He noted that if the Board finds the proposal meets the criteria for the grant of special permit relief, the Building Department will work with the Petitioner to ensure compliance.

The Board deliberated on the merits of the proposal. Board Members Zuroff and Hussey were in agreement that the proposal was in line with the requirements for a special permit under the Zoning By-Law. Chairman Geller stated that the proposal meets the requirements of **Sections 5.74** and **9.05** of the Zoning By-Law.

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 said Sections 5.74 and 9.05, finding specifically under said Section 9.05:

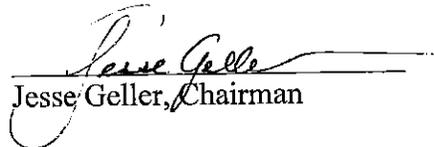
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the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

1. Evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

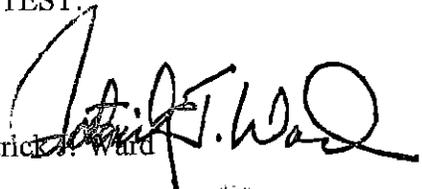
Unanimous Decision of
The Board of Appeals

Filing Date: 11-28-2017


Jesse Geller, Chairman

A True Copy

ATTEST:


Patrick J. Ward

Clerk, Board of Appeals

