



# *Town of Brookline*

## *Massachusetts*

BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark Zuroff  
Christopher Hussey

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

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2018-0006  
AMIT RAO & SHIBANI SAIN RAO  
41 CUTLER LANE, BROOKLINE, MA

Petitioners, Amit Rao and Shibani Sain Rao, applied to the Building Commissioner for permission to legalize an existing over-height fence. 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 April 26, 2018 at 7:45 PM., 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 Petitioners, 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 April 12, 2018 and April 19, 2018 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:

**41 CUTLER LANE, BROOKLINE, MA 02467 - Legalize existing over height fence in a(n) S-25 SINGLE-FAMILY on 04/26/2018 at 7:45PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Robert L. Allen, Jr.) 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:

**§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](http://www.brooklinema.gov).*

*The Town of Brookline does not discriminate in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer. If you have any questions regarding this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at [chaynes@brooklinema.gov](mailto:chaynes@brooklinema.gov).*

*Jesse Geller, Chair  
Christopher Hussey  
Mark Zuroff*

**Publish: 04/12/2018 & 04/19/2018**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairperson Johanna Schneider and Board Members Kate Poverman and Chris Hussey. Also present at the hearing was Zoning Planner & Coordinator Ashley Clark.

The case was presented by Shayna L. Duff, Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance were the Petitioners, Amit Rao and Shibani Sain Rao.

Chairperson Schneider called the hearing to order at 7:45 p.m. Attorney Duff waived the reading of the public notice.

Ms. Duff then described the proposal stating that the Petitioners propose to legalize an existing over-height fence. Attorney Duff explained that that the portion of the fence at issue is between 41 Cutler Lane and 822 Boylston Street/ 80 Reservoir Road. Attorney Duff described the referenced portion of the fence as bamboo posted on top of another fence to create a greater height and provide privacy to the back yard of 41 Cutler Lane. Furthermore, Attorney Duff noted that all abutters provided support letters and that the Planning Board unanimously approved this proposal.

Attorney Duff then stated that the Petitioners seek a special permit for relief from **Section 5.74** pursuant to **Section 9.05** to legalize the existing over-height fence.

Attorney Duff discussed the proposal's compliance with the criteria of **Section 9.05** of the Zoning By-Law stating: the fence is appropriate for the single-family dwelling in order to afford the Petitioners adequate privacy because without the fence, patrons of the abutting commercial property (which has floor to ceiling windows) can see into the backyard at 41 Cutler Lane; the fence will not adversely affect the neighborhood because the fence is already in existence and all of the abutters are supportive; the property's on-site circulation is not impacted by this fence, and it will not cause a nuisance or serious hazard to vehicles or pedestrians; adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling; and there will be no effect on the supply on housing available for low and moderate income people. With respect to **Section 5.74**, Attorney Duff reiterated the privacy concerns presented by the office building at 822 Boylston Street.

Chairperson Schneider then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal.

Chairperson Schneider then asked whether anyone was present to speak in opposition to the

proposal. No one spoke in opposition to the proposal.

Chairperson Schneider then called upon Ashley Clark, Zoning Planner & Coordinator, to deliver the findings of the Planning Board. Ms. Clark noted the following:

**FINDINGS**

**Section 5.74 – Fences and Terraces in Rear Yards**

<b>Fence Height</b>	<b>Allowed</b>	<b>Existing</b>	<b>Finding</b>
<b>Height (rear)</b>	7 feet	~ 12 to 13 feet	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.*

**STAFF ANALYSIS**

The staff supports the legalization of this fence. It already exists and shields the single-family home from a commercial parking lot and office building located off of Reservoir Road that abuts the applicant’s property at the rear. Section 5.74 of the By-Law allows special permits for fences over 7 feet in situations where they will mitigate noise or other negative impacts which apply in this case. The applicant has numerous support letters from direct abutters and neighbors including the owner of the commercial property, Chestnut Equity Partners.

**PLANNING BOARD RECOMMEDNATION**

The Planning Board supported legalizing this existing fence. The Board asked about the fence material, which is bamboo, and questioned the durability of the fence long term, but had no objections.

Therefore, the staff recommends approval of the site plan dated 1/23/2018 by John R. Hamel subject to the following conditions:

1. The applicant shall submit evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairperson Schneider then called upon Ashley Clark to deliver the comments of the Building Department. Ms. Clark stated that the Building Department has no opposition to this request and should relief be granted, the Building Department will work with the Petitioner to ensure compliance with the Building Code.

In reliance on the above referenced plan, the Board then determined, by unanimous vote that the requirements for a special permit from Section 5.74 pursuant to Section 9.05 of the Zoning By-Law, were met, finding specifically under said Section 9.05:

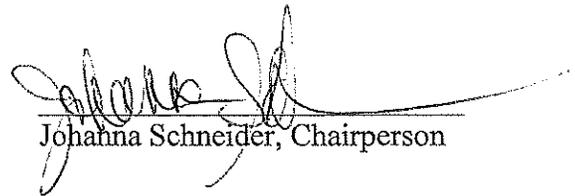
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the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

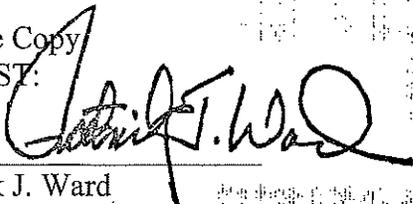
- 2. The applicant shall submit evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

Filing Date: 5/4/2018

  
Johanna Schneider, Chairperson

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals