



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Christopher Hussey

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

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2018 AUG 14 P 12:52

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0037
ASPI FERSHID & HIROKO
268 WALNUT STREET, BROOKLINE, MA

Petitioner, Hiroko Aspi, applied to the Building Commissioner for permission to home occupation for tutoring in a single-family home. 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 July 12, 2018 at 7:05 PM., in the Select Board'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 June 28, 2018 and July 05, 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:

268 WALNUT STREET, BROOKLINE, MA 02445 - Use of Residence for Educational Business in a(n) T-5 TWO-FAMILY & ATTACHED SINGLE-FAMILY on 07/12/2018 at 7:05 PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: ASPI, FERSHID & HIROKO) Precinct 5

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:

§4.04.1 – LIMITATION OF AREA OF ACCESSORY USES

§4.07 – TABLE OF USE REGULATIONS, USE #60

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 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.

*Jesse Geller, Chair
Christopher Hussey
Mark Zuroff*

Publish: 06/28/2018 & 07/05/2018

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. Deputy Building Commissioner Mike Yanovitch and Planner and Zoning Coordinator Ashley Clark were also present.

Chairman Schneider called the hearing to order at 7:10 p.m. Hiroko Aspi, homeowner, waived the reading of the public notice.

The case was presented by Ms. Aspi.

Ms. Aspi stated that she lives at 268 Walnut Street with her family who have been Brookline residents for the last 15 years and her children are currently in the Brookline education system. She stated that she is an active member of the school community, serving as Chair to the Lincoln School Parent Teacher Organization, an advocate for education programs, and is on the Board for Reflection in

Action.

Ms. Aspi then described the neighborhood and community support for her proposal. She stated that the single-family home is located in a T-5 zoning district, and is approximately two blocks from Lincoln and near Brookline High School. She noted that within the immediate block there are many Lincoln students as well as current and retired teachers who are in support of the proposal.

Ms. Aspi then described her experience in education and the business operations. She noted that with her son entering kindergarten she identified a gap in the teaching of mathematics which depends heavily on arithmetic operations and began to teach her son the Japanese methods for learning mathematics, which emphasizes logical reasoning, and would like to tutor students these same methods she has found helpful to her family. She stated that she is seeking relief to operate a tutoring center in her home for up to eight students between the hours of 3:00PM and 6:15PM Monday through Friday. Ms. Aspi referred to a floor plan she submitted for the Board's review which indicates a small room on the first floor dedicated for the tutoring space and the living room will serve as a waiting area for caregivers during pick-up time. Further, Ms. Aspi stated, she has no intention of hiring other instructors and there will be no outside vendors. She referenced photos submitted to the board of the driveway which can accommodate cars for drop-off and pick-up of the students.

Ms. Aspi stated that relief for this home occupation use may be granted by under **Section 4.07 Use #60** which requires a special permit for a customary home occupation, if pupils come. She noted the neighborhood support she received from sending emails, going door to door, as well as the unanimous support for the proposal from the Planning Board on June 21, 2018, where no public member came to speak in opposition. Further, Ms. Aspi stated that **Section 4.04.1** states that "no accessory use or uses within a building shall occupy more than a combine 25 per cent of the floor area of the principal building." She referenced the submitted floor plan and stated that they demonstrate the accessory home occupation use occupies substantially less than 25 per cent of the floor area of the home. For those

reasons, Ms. Aspi stated, she believes her proposal meets the requirements set forth in **Section 9.05**.

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

Chairman Schneider then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

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

FINDINGS

Section 4.07 - Table of Use Regulations, Use #60

A special permit for customary home occupation for gain is required if customers or pupils come to the house for business or instruction.

STAFF ANALYSIS

Staff has no opposition to this request for a home occupation special permit. The proposed tutoring area will occupy less than 25% of the floor area of the home, as shown on the provided floor plans, which is a requirement for accessory uses. The applicant has also provided photos showing the opportunities for parking for visitors which appear to be ample. Many of the students may walk since this property is only a few blocks from the Lincoln Elementary School. The applicant has also spoken with and received approval from direct abutters. The staff does not believe the tutoring home occupation will be a detriment to neighbors nor have any serious negative impacts.

Ms. Clark stated that the Planning Board was supportive of the owner's request to hold tutoring sessions in her home and did not believe there would be any negative impact stemming from this use. She noted that the Planning Board discussed what type of condition should be placed regarding the permitted length of time for the occupation but ultimately, the Planning Board agreed to add a length of two years, after which the applicant will need to re-apply to extend the use.

Therefore, Ms. Clark stated, the Planning Board recommends approval subject to the following conditions:

1. Hours for tutoring shall be restricted to Monday through Friday from 3:00 p.m. to 6:15 p.m.
2. No more than a group of eight students shall be allowed at any one time.

3. The relief granted herein shall terminate in two years unless the Board of Appeals, after further public hearing, votes to extend the same.
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: evidence that the Board of Appeals decision has been recorded at the registry of Deeds.

Upon inquiry from Chairman Schneider, Mr. Yanovitch stated that the specific time frame relief has been granted for special permits for uses has varied; it has been the standard practice to place a sunset clause on applications for occupations. He noted that it was very often the case that these applicants reappear well after the relief has been expired and suggested that a more effective approach is to grant the relief for continued ownership which can be granted for a special permit request. He further stated that continued ownership has been used in the case of physicians. Mr. Yanovitch stated that the Building Department has no objection to the relief and would support a condition that the relief expire with new ownership of the property.

During deliberations, Board Member Palermo noted that case law (Solar vs. Zoning Board of Appeals of Lincoln, 33 Mass. App. Ct. 398) supports conditioning special permit relief to a specific owner as a legal mechanism under Massachusetts General Laws Chapter 40A, Section 9. She also commended the applicant for her very thorough application and felt that the proposal was worthy of the requested relief. Board Member Hussey concurred. Chairman Schneider stated that the proposal meets the requirements for the grant of special permit relief and was in favor, subject to a revised condition that the relief granted shall terminate upon transfer of the property to another owner and not require the applicant to return to the Board in two years.

The Board then determined, by unanimous vote that the requirements for a special permit under Section 4.07, Use #60 pursuant to Sections 4.04.1 and 9.05 of the Brookline Zoning By-Law, respectively, were met finding specifically under said Section 9.05:

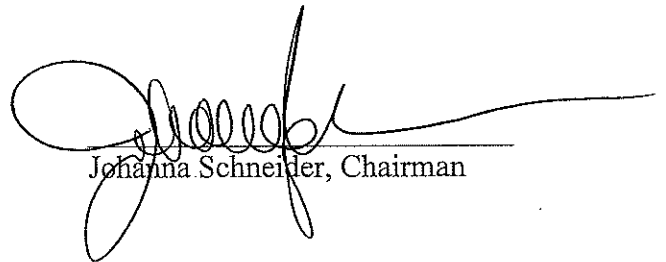
- a. The specific site is an appropriate location for such a use, structure, or condition.

- 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 special permits requested subject to the following revised conditions:

- 1. Hours for tutoring shall be restricted to Monday through Friday from 3:00 p.m. to 6:15 p.m.
- 2. No more than a group of eight students shall be allowed at any one time.
- 3. The relief granted herein shall terminate upon transfer of the property to another owner.
- 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: evidence that the Board of Appeals decision has been recorded at the registry of Deeds.

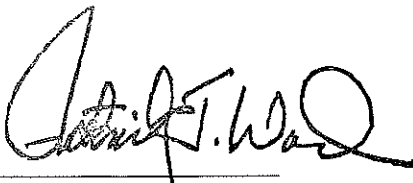
Unanimous Decision of
The Board of Appeals



Johanna Schneider, Chairman

Filing Date: 8/17/18

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals