



BOARD OF APPEALS
Chair Jesse Geller
Christopher Hussey
Jonathan Book

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Town of Brookline
Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2013-0013
OWNER: **John and Darla Soukas**

Petitioners, John and Darla Soukas, applied to the Building Commissioner for permission to construct a swimming pool in the front yard at 37 Warren Street. The application was denied and an appeal was taken to this Board.

On January 24, 2013 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed March 28, 2013 at 7:15 p.m. in the Selectmen's hearing room as the time and place of a hearing on 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 February 14 and 21, 2013 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **SOUKAS JOHN & DARLA**

Owner: **SOUKAS JOHN & DARLA**
Location of Premises: **37 WARREN STREET**
Date of Hearing: **March 28, 2013**
Time of Hearing: **7:15 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th Floor**

A public hearing will be held for a variance and/or special permit from:
5.43; Exceptions to Yard and Setback Regulations
5.50; Front Yard Requirements
5.53; Accessory Buildings in Front Yards
5.54; Exceptions for Existing Alignment
8.02.2; Alteration or Extension

of the Zoning By-Law to **Construct a swimming pool in front yard setback requiring BOA relief at 37 WARREN ST**
Said premise located in a **S-15 (Single Family) Residential district.**

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

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 the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

**Jesse Geller
Christopher Hussey
Jonathan Book**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Mark G. Zuroff, and Board Members Jonathan Book, and Chris Hussey. Attorney Ken Hoffman, whose business address is 10 St. James Avenue, Boston, presented the case for the petitioner.

Attorney Hoffman described the property as being located near the intersection of Boylston Street and Warren Street, abutting the Brookline Reservoir. On the site is a single-family dwelling and a carriage house that is used as both a garage and an accessory dwelling. The lot has two curb cuts, one driveway leading to the carriage house and another leading to the front of the main residence. A vertical board fence runs along the front property line. Surrounding properties include other single-family dwellings, as well as the Brookline Reservoir and the Reservoir Gatehouse.

Mr. Hoffman said his clients, John and Darla Soukas, wish to construct a pool in the property's front yard, next to the accessory dwelling/garage. The pool would be 16' x 34' and include a new patio area with lawn on the other side. A wire mesh fence would separate the new pool and patio area from the rest of the yard.

Attorney Hoffman said this case would be an interesting case if it were a variance argument; however, the relief requested is only special permit. He said the lot is a classic triangular lot between Warren Street and the Brookline Reservoir. The lot is subject to average alignment which pushes the front yard back to 67 feet and the by-law says you cannot require more than twice the front yard which makes the requires setback 50 feet. Mr. Hoffman said the location proposed is the best location due to the topography. He said the lot is a very large lot and there would be no impact on Warren Street because of the existing landscaping, as well as a fence that runs along the Warren Street property line.

Doug Jones, Landscape architect for the petitioner, presented the architectural review of the case. Mr. Jones pointed out the lot is effectively screened from Warren Street, but the Reservoir is significantly

higher and presents privacy issues if the pool were to be sighted closer to the rear. He said there would be some additional landscaping added at the request of the Planning Board. Chairman Zuroff requested a clarification of the fence modifications. Mr. Jones said the fence would be stepped back from the street and additional vegetation added at the fence line. Attorney Hoffman said the counterbalancing amenities would be the modification of the fence as well as the installation of the additional landscaping.

The Chairman asked if anyone wished to speak in favor of the proposal. Stan Schlosman of 45 Warren Street rose to speak. Mr. Schlosman said he is the only contiguous neighbor. He said he supports the proposal and agrees with the placement of the pool. He said he feels it is a thoughtful plan and the best location.

The Chairman asked if anyone wished to speak in opposition. No one rose to speak.

The Chairman called upon Timothy Richard, planner, to deliver the report for the Planning Board.

Section 5.50 – Front Yard Requirements

Section 5.53 – Accessory Buildings in Front Yards

Section 5.54 – Exceptions for Existing Alignment

Dimensional Requirements	Required	Proposed	Relief
Front Yard Setback	50’*	37.4’	Special

* Under *Section 5.54*, a front yard setback of 65’ was calculated based on the existing alignment of neighboring buildings, however the setback cannot be greater than twice the existing requirement, which in an S-15 zoning district is 25’.

** Under *Section 5.43*, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming structure or use.

Mr. Richard said the Planning Board is supportive of the proposed pool and related improvements. While the triangular-shaped lot is large, there are few places on the property where a pool would be appropriate. The proposed location, along with the landscaping and fencing shown on the “Overall Site Plan,” should adequately screen the pool and patio area from the road.

Therefore, the Planning Board recommends approval of the site plan by Site Design Engineering, LLC, last dated 12/13/2012, and the plans prepared by Keith LeBlanc Landscape Architecture, dated 1/10/2013, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans 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 a final landscape and fencing plan including some jog backs on at least a couple of the fence panels with landscaping on the outside of the fence as well as other landscaping on the property, subject to the review and approval of the Assistant Director of Regulatory Planning.

3. A wood board fence, or similar, along with adequate landscaping shall be maintained along the front lot line to appropriately screen the pool area from the street.
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: 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.

Michael Yanovitch, Chief Building Inspector, delivered the comments for the Building Department. Mr. Yanovitch said the lot is a unique lot in its shape as well as topography and location. He said there is an additional restriction on the site due to its proximity to the Reservoir. Mr. Yanovitch said construction in the rear would be restricted because of a Conservation setback. He said the Building Department has no issue with the request for relief.

The Board deliberated on the merits of special permit relief. The Board also voted unanimously the requirements for a special permit for 5.43, and 8.02.2, 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.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans 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 a final landscape and fencing plan including some jog backs on at least a couple of the fence panels with landscaping on the outside of the fence as well as other landscaping on the property, subject to the review and approval of the Assistant Director of Regulatory Planning.
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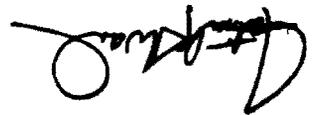
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Unanimous Decision of
The Board of Appeals

Filing Date: April 26, 2013


Mark G. Zuroff, Chairman

Patrick J. Ward
Clerk, Board of Appeals



A True Copy
ATTEST: