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BUILDING DEPT.  
TOWN OF BROOKLINE

# Town of Brookline

## Massachusetts

**BOARD OF APPEALS**  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Christopher Hussey

Town Hall, 1<sup>st</sup> Floor  
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Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043  
Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2012-0015

Petitioner, Ming and Jackson Slomiak, applied to the Building Commissioner for permission to enclose the existing deck with glass panel sides and roof on the second floor of their home at 169 Naples Road. The application was denied and an appeal was taken to this Board.

On February 16, 2012, 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 April 12, 2012, at 7:00 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 March 22, and March 29, 2012, 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: **SLOMIAK JACKSON C & MING C**  
Owner: **SLOMIAK JACKSON C & MING C**  
Location of Premises: **169 NAPLES RD**  
Date of Hearing: **APRIL 12, 2012**  
Time of Hearing: **7:00 p.m.**  
Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup> Floor**

A public hearing will be held for a variance and/or special permit from:

- 1. 5.43; Exceptions to Yard and Setback Regulations, special permit required.**
- 2. 5.60; Side Yard Requirements, variance required.**
- 3. 8.02.2; Alteration or Extension, special permit required**

of the Zoning By-Law to enclose the existing deck with glass panel sides and roof on the 2nd floor of your home

at **169 NAPLES RD**

Said Premise located in a **T-5** (two-family and attached single) 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.*

**Enid Starr  
Jesse Geller  
Christopher Hussey**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr, and Board Members, Jesse Geller and Mark Zurroff.

The petitioner, Ming Slomiak, presented her case before the Board. Mrs. Slomiak described 169 Naples Road as a recently renovated three-story two-family home located near Packard's Corner featuring two gabled bays that bump out from the front façade and extend from the third

floor roof to a gable over the first floor entry on the front façade. To the left of the gables, there exists a second story deck located primarily on the front façade. Mrs. Slomiak continued that the applicants are proposing to convert one of the decks on the front façade into a sunroom, which will be constructed of glass and will have a gently sloping roof. The new sunroom will add an additional 55.6 square feet of floor area to the home and no FAR relief is required. She stated that a couple of winters back there was so much snow on the porch she had water come in the house. She said it would be safer for her grandchildren to play in the enclosure rather than on the porch, because her grandson likes to climb. She said the Planning Board did not support the proposal because they wanted her to build a “regular room”, which would be too expensive to build.

Chairman Enid Starr asked the petitioner if, according to Section 5.43 of the Zoning By-Law, she was proposing to provide counterbalancing amenities. The petitioner stated that she would landscape the front yard that did not currently have any significant landscaping.

Chairman Starr asked if the other Members of the Board had any questions. Board Member Mark Zuroff asked the petitioner if she had looked into alternative designs such as different glass or different kinds of roofs. The petitioner stated that she liked the design as proposed and it would be easier for future generations to remove the enclosure if they wished to do so. She also said it was more economical.

The Chairman asked if anybody wished to speak in support. No one rose to speak.

The petitioner stated that she has spoken to her neighbors and they are supportive.

The Chairman asked if anybody would like to speak in opposition. No one rose to speak.

Polly Selkoe, Assistant Director of Regulatory Planning delivered the findings of the Planning Board.

**Section 5.60 – Side Yard Setback**

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Side Yard Setback</b>	7.5'	2.5'	2.5'	Special Permit*

\* Under Section 5.43 the Board of Appeals may waive setback dimensions if a counterbalancing amenity is provided. As the entire rear and side yards are paved [which is a pre-existing nonconforming condition], Planning Staff suggests that the removal of some of the pavement along the lot lines and the installation of landscaping would be appropriate counterbalancing amenities should this proposal be approved.

**Section 8.02.2 – Alteration or Extension**

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

Ms. Selkoe said the Planning Board is not supportive of the construction of this sunroom as proposed. The Planning Board is concerned that the sunroom has not been properly engineered and that the virtually flat glass roof will not be able to withstand snow load or drain properly. Further, the Planning Board finds the glass enclosure to be inconsistent with the style and the architecture of the home and feels the sunroom has a commercial appearance that is not appropriate to residential architecture. However, the Planning Board also indicated they could support the conversion of the porch to living area if the proposal were properly engineered and revised to utilize more traditional materials. The Planning Board recommended the applicant revise their proposal and return before them with a proposal to enclose the porch with a wood framed structure, operable windows and a sloped shingled roof; however, the applicant chose to move forward to the Board of Appeals without revisions.

**Therefore, the Planning Board recommends denial of the plans by Excel Signs, dated 1/29/12.**

The petitioner asked to speak in rebuttal to the Planning Board report. The petitioner said the architect was called to appear at the Planning Board hearing the day of the hearing and was not completely prepared.

The Chairman then called upon the Chief Building Inspector, Michael Yanovitch, to deliver the

recommendations of the Building Department. Mr. Yanovitch noted that the Building Department would be supportive of the relief, but would need additional engineered drawings specific to the glass in the enclosure, to include but not limited to; type of glass and ability of the glass to withstand loads.

During deliberations, Board Member Zuroff stated that from what he has seen and heard and based on the Planning Boards recommendations, he would ask that the petitioner take more time to re-design the structure. Board Member Geller stated that the Board was not charged with deciding on the design of the proposal. Board Member Geller stated that there were two issues: First, relief under Section 5.43 of the Zoning By-Law. He asked if the petitioner had offered sufficient counterbalancing amenities to satisfy requirements under this Section. Mr. Geller affirmed his own question. Second, is whether the application for relief satisfies the requirements of Section 9.05 of the Zoning By-Law, including, whether this an appropriate location for this structure. Mr. Geller said he felt that the answer was yes and that it is the Building Department's responsibility to ensure that what is constructed is structurally sound not the Zoning Board of Appeals. Chairman Starr agreed with Board Member Geller. Mr. Zuroff agreed subject to the need for a condition of approval requiring additional engineering.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that it was desirable to grant all the relief required by special permit. After finding that adequate counter-balancing amenities were provided, the Board granted relief from **Sections 5.43** and **8.02.2** of the Town of Brookline Zoning By-Law. The Board also made the following specific findings pursuant to **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 and elevations indicating all salient dimensions and materials 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 plan including all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.**
3. **Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner additional engineering plans, elevations and specifications to include, but not be limited to glass specifications, labeling, and load calculations, which shall be subject to the review and approval of the Building Commissioner.**
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.**

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2012 APR 20 A 9:54

unanimous Decision of  
 the Board of Appeals

  
 \_\_\_\_\_  
 Jesse Geller, Chairman

Filing Date: April 20, 2012

A True Copy  
 ATTEST:

A handwritten signature in black ink, appearing to read "Patrick J. Ward". The signature is written in a cursive style with a large initial "P" and a distinct "W".

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Patrick J. Ward  
Clerk, Board of Appeals