



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

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**Town of Brookline**  
BUILDINGS DEPT.  
TOWN OF BROOKLINE  
*Massachusetts*

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043

**Patrick J. Ward, Clerk**

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2012-0020

Petitioner, Alex Politman, applied to the Building Commissioner to relocate a shed closer to side and rear lot lines and expand its square footage beyond that which is allowed at 69 Babcock Street. The application was denied and an appeal was taken to this Board.

On May 3, 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 June 21, 2012 at 7:30 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 May 31 and June 7, 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: **POLITMAN, ALEXANDER**  
Owner: **POLITMAN ALEXANDER & POLITMAN ANGELA**

Location of Premises: **69 BABCOCK ST**  
Date of Hearing: **June 21, 2012**  
Time of Hearing: **7:30 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. **4.07; Table of Use Regulations, Use #61, special permit required.**
2. **5.09.2.k; Design Review, special permit required.**
3. **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
4. **5.72; Accessory Buildings or Structures in Rear Yards, Variance Required.**
5. **8.02.2; Alteration or Extension, special permit required.**

of the Zoning By-Law to Relocate the shed closer to the lot lines and expand its square footage beyond what is allowed.

at **69 BABCOCK ST**

Said premise located in a **M-10 (multi-family) residence 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, Jonathan Book and Christopher Hussey. The case was

presented by the applicant's Attorney Jeffrey Allen whose business address is 88 Black Falcon Avenue, Boston, MA 02210

Attorney Allen described the property as seven unit multi-family dwelling at the intersection of Babcock and Dwight Street. The surrounding neighborhood is primarily residential, with a mix of two and multi-family dwellings. It is two blocks from the Coolidge Corner Business District.

Chairman called on Assistant Director of Regulatory Planning, Polly Selkoe, to explain an error contained in the Planning Board report. Ms. Selkoe said on page 2 of the Planning Board's report it states the relief requested can be granted by variance. She said it may also be granted by special permit under use # 61 of the Town of Brookline Zoning By-Law § 4.07 Table of Uses. Chairman Starr said the board would decide if relief under that section was applicable.

Attorney Allen asked for a clarification due to the difference between arguing a variance or a special permit. Attorney Allen said the Planning Board report did cite the requirement for relief correctly in saying that a special permit is required. Chairman Starr asked how Section 5.72 is reconciled. Attorney Allen argued that under section 5.43 any of the dimensional requirements can be waived. Chairman Starr asked for a step by step review as it relates to the request for relief. Chairman Starr asked if the structure covers more than 25% of the rear yard. Attorney Allen said no. Chairman Starr asked if the structure was adjacent to an alley. Attorney Allen said no, and went on to say that it leaves two issues; size and setback, both of which can be granted by special permit. Chairman Starr asked how we would know if the structure covers more than 25% of the yard. Attorney Allen said it is a Building Department issue and could still be rectified by a special permit.

Chairman Starr asked Attorney Allen to proceed with the presentation. Attorney Allen said Mr Politman has reached an agreement with the abutting condominium associations and a grant of relief would benefit Mr. Politman, as well as the Abutters. Chairman Starr said there is an objecting letter from 62 Dwight St, Judy Zerra, who could not be at the hearing. Richard Abeneri rose to speak to clarify that Ms. Zerra is an owner in the condominium association that he represents, Dwight-Babcock Condominium Trust. Mr. Abeneri said he cannot speak to Ms. Zerra's opposition but does point out she was not able to take part in the negotiations that led up to the agreement signed by Mr. Politman and the Abutting condominium associations.

Mr. Allen said he understands that the Planning Board's recommendations are not very helpful. He believes the Planning Board's recommendations were based on the requirement for a variance. Attorney Allen said that if the shed is legalized, it will benefit all involved. He said the owner is present and available for questions.

Board Member Book asked for an explanation of the chronology of events. Mr. Allen said his client believed he had a permit for a shed but did not know of any restriction on the size. Board Member Book asked to hear from the Building Department on the chronology and asked if we have a copy of the 2007 permit that allowed the placement of the shed. Michael Yanovitch, Chief Building Inspector said we have a copy of the 2007 plan which allowed the installation of the shed, however there was a subsequent permit to place the permitted shed on footings and to install new siding. A recent inspection in 2012, by the local inspector revealed that the shed was moved closer to the lot line and was built bigger than previously allowed. Mr. Yanovitch went on to say the plan provided was hard to read but it appears as though the numbers on the plan are dimensions and setbacks. Board Member Book said what he wanted to understand was; did the petitioner know he was violating the by-law or was it just an honest mistake. Mr. Yanovitch said that on the approved plan of the shed in 2007 and the shed plan submitted to the

Board of Appeals in 2012, the size of the shed is significantly different. The petitioner, Mr Politman, said the shed was built larger than 150 Square feet in 2007 and when the shed was placed on the footings it was moved closer to the lot line. Mr. Yanovitch spoke to clarify the original approved dimensions. He said on the 2007 plan you can see a “6” at the rear of the shed which coincides with the required side yard setback, you can also see a “6” to the left of the shed which would coincide with the required rear yard. He went on to say the “10” at the rear of the shed denotes the shed’s proposed width and the “14” at the side of the shed, which looks to have been a “16” and changed to “14”, denotes the shed’s length. These dimensions add up to 140 square feet which would be as of right, as opposed to the 160 square feet that the shed would have contained prior to changing the 16 foot dimension to 14 feet. Chairman Starr said she agreed that the explanation was probably accurate and it appears the shed was originally built larger than allowed by the 2007 permit.

Chairman Starr asked if anyone present would like to speak in support of the proposal. Mr. Allen submitted a list of proposed conditions as well as an executed agreement between the abutting condominium associations and Mr. Politman. The Chairman admitted these documents as exhibits #1 and #2. Mr. Richard Abeneri rose to speak on behalf of the Babcock-Dwight Condominium Trust. Mr. Abeneri said he would like to speak to the importance of the conditions. He said the condominium association feels their support hinges on Mr. Politman following through with the proposed conditions. Mr. Allen said at the request of one of the abutters, a clause has been added to the agreement for specific performance in the event of a breach. Mark Merranti, who lives at 61 Babcock and represents the condominium association at 57 – 65 Babcock Street, said he did not see the agreement until just before the hearing and without that agreement he would not support the proposal. He said the agreement gets everyone to a good place. Eric Rass, trustee of 63 Babcock Street, seconded the importance of the signed

agreement and proposed conditions. Chairman Starr said if the Board grants relief the conditions proposed and agreed to can be made part of the decision and enforced by the town. Chairman Starr asked if anyone present would like to speak in opposition of the proposal. No one rose to speak.

The Chairman called on Polly Selkoe, Assistant Director for Regulatory Planning, to deliver the findings of the Planning Board.

**FINDINGS**

**Section 4.07 – Table of Use Regulations, Use #61, Accessory Structure over 150 sf.**

A special permit is required in all residential zones.

Section 5.09.2.k – Design Review

A special permit is required under Design Review for any structure requiring a variance, which in this case is required for its size over 150 sf.

**Section 5.72 – Accessory Building or Structures in Rear Yards**

<b>Dimensional Requirements</b>	<b>Required/Allowed</b>	<b>Approved</b>	<b>Existing</b>	<b>Relief</b>
<b>Max. Size for Accessory Structure</b>	150 sf or less	142 sf	182 sf. +	Variance
<b>Rear Yard Setback</b>	6'	6.9 ft.	4.5 ft.	Special

+exact size unknown

\* 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 non-conforming structure.

Ms. Selkoe said the Planning Board is not supportive of the legalization of the shed. The applicant received a building permit for its initial location and size in 2007 because it conformed to the Zoning By-Law. When the applicant applied again in 2011 for a building permit to put siding on the shed and place it on footings, there was no mention in his application of expanding the floor area or relocating the

shed closer to the rear property line. The applicant has not provided any basis for the granting of a variance, nor offered a counterbalancing amenity to offset the yard incursion, per the requirement for a special permit, under Section 5.43. The shed can be relocated 1.5' further from the property line to meet the 6 foot yard setback and can be reduced in size to meet the 150 sf maximum allowed for accessory structures. If the shed were much smaller and used exclusively for equipment needed for just this building, the backyard would be a much more inviting space for the building's occupants. Ms. Selkoe went on to say the reason the Planning Board made the recommendation for denial was there was no argument made for a variance and the agreement between Mr. Politman and the abutting condominium associations had not been signed. Ms. Selkoe said the Planning Board could recommend approval based on the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations 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 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; 2) final shed elevations; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Yanovitch, Chief Building Inspector, for the report from the Building Department. Mr. Yanovitch said the Building Department cannot support the request for relief; however, it does not oppose the request. He said it makes the request a little easier to support now that the neighbors have entered into an agreement with the petitioner. Mr. Yanovitch said the Building Department asks if the Board decides to grant relief, a condition be added that states the shed is to be used accessory to the primary structure and not used for commercial purposes. Mr. Yanovitch also asked that the conditions of the agreement between Mr. Politman and the abutting condominium association be read into the decision. Mr. Yanovitch said Mr. Politman does a fair amount of work in the town and if the board grants relief, the Building Department will work with Mr. Politman to ensure compliance with any conditions as well as compliance with the Building Code. Due to the fact the shed is closer to the lot line than 3 feet the siding would have to be changed to non-combustible siding.

Attorney Allen said he appreciates the Building Departments comments and the position of the Planning Board, but he believes that the circumstances are that a mistake was made when building the shed, but it is that mistake that has led to better circumstances for all involved in the agreement between Mr. Politman and the abutting condominium associations.

During deliberations Board Member Jonathan Book said he is not in favor of rewarding bad behavior, but he is not sure if it is bad behavior or an honest omission. He said if the request came in the first instance, knowing the neighbors are in support, he would have voted to grant relief initially. The Board found that the conditions listed in the agreement comprise more than adequate counterbalancing amenities under section 5.43. Board Member Book said he will cast a vote in favor of the grant. Board Member Hussey questioned the coverage of the rear yard exceeding 25%. Board Member Book said the grant could still be by special permit. Board member Hussey said he was in favor of the grant. Chairman Starr voted in favor of the Grant.

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. The Board granted relief from 4.07 #61, 5.43 and 5.72 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 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 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; 2) final building elevations; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.
3. In accordance with the executed agreements dated June 20, 2012 and June 18, 2012 the applicant, within 30 days of the grant of relief, shall comply with the following:

- Remove section of fence that runs along the driveway side of the courtyard space.
- Remove section of fence that goes from driveway down the path that divides the courtyard space.
- Plant suitable decorative plantings in places where the fence has been removed.
- Remove all construction debris , ladders, bricks, and tools
- Remove utility trailer.
- Return open space to grass.

4. The applicant will use the shed accessory to the principal structure on the lot and the shed shall be used for commercial purposes. The shed shall comply with all provisions of the Building Code, including fire rating of the wall adjacent to the lot line.

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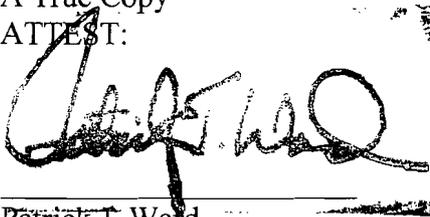
Unanimous Decision of  
 The Board of Appeals



Enid M. Starr, Chairman

Filing Date: July 5, 2012

A True Copy  
 ATTEST:



Patrick J. Ward  
 Clerk, Board of Appeals