



RECEIVED

MAR 25 AM 11:34
TOWN CLERK'S DEPT.
TOWN OF BROOKLINE

Town of Brookline Massachusetts

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

Town Hall, 1st 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. 2012-0034

Petitioners, Christopher O'Brien and Johannes Walter applied to the Building Commissioner for permission to construct a roof deck at 49 Alton Place. The application was denied and an appeal was taken to this Board.

On March 1, 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 7, 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 May 17th and 24th, 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: **O'Brien Christopher P**
Owner: **O'BRIEN CHRISTOPHER P ARTAVIA GABRIELA**
Location of Premises: **49 Alton PL 2**
Date of Hearing: **June 7, 2012**
Time of Hearing: **7:00 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:

1. **5.30; Maximum Height of Buildings, variance required**
2. **5.31.2; Exceptions to Maximum Height Regulations, special permit required**
3. **5.43; Exceptions to yard and setback requirements, special permit required**
4. **5.50; Front Yard Requirements, variance required.**
5. **8.02.2; Alteration of Extension, special permit required.**

of the Zoning By-Law to Construct a deck atop the roof

at **49 Alton PL 2**

Said premise located in an **(General) Business 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 Mark Zuroff. The case was presented by the attorney for the petitioners, Jacob Walters of 27 Harvard Street,

Brookline, MA 02445. Also present with the petitioners was their architect, Karen Scanlon of Francis Street in Brookline, MA 02446.

Attorney Walters described the property a three-unit condo building that was constructed in 1925. The property is an interior row house and is attached to six other buildings [47-59 Alton Place, 50-52 St. Paul Street] for a total of seven buildings; all of which are located on the same lot. The lot has frontages on both Alton Place as well as St. Paul Street, and slopes downward from 47 Alton Place toward 50 St. Paul Street. The surrounding properties are primarily multifamily residential properties.

Attorney Walters indicated that the petitioners owned Units 2 and 3 of the condominium building at 49 Alton Place, and wished to install a roof deck, which would then be divided into two separate decks for the use of the respective applicants. Mr. Walters stated that the condominium association was in support of the petitioners' application and added that an agreement between the petitioners and the condominium association was in place.

Attorney Walters said that all the relief required could be granted by three Special Permits, under Sections 5.31.2, Section 5.43 and Section 8.02.2. Mr. Walters stated that the petitioners have moved the proposed deck back so as to comply with the front yard setback requirement and as a result no variance is required for front yard setback relief. Mr. Walters indicated that the Planning Board had reviewed all aspects of the design and unanimously recommended approval. Mr. Walters added that the petitioners and their architect worked with the Planning Board Staff in order to satisfy concerns raised and stated that the Planning Board had found that the proposed roof deck would have no impact upon the street scape. Mr. Walters then stated that Section 5.31.2 of the Zoning By-Law allows for the establishment of a different building height maximum by Special Permit where the interpretation of the height requirement is not clear as a

result of non-typical lot shapes, topography, building alignment or configuration. Mr. Walters opined that 49 Alton Place fit into the category designed by Section 5.31.2, as the height of the building was 31'2", but because 49 Alton Place is attached to six (6) other buildings on a street with a significant slope, the required measurement called for in the Zoning By-Law made the building non-conforming. Mr. Walters added that if ever Section 5.31.2 was applicable it was in this situation given the steep grade of Alton Place. With reference to Section 5.43, Mr. Walters said that the petitioners plan to install decorative planters on the deck, which would serve as a counterbalancing amenity, which if deemed satisfactory would allow relief. Mr. Walters said that the final Special Permit was due to the extension of the building height as the deck would be raised approximately 18" above the existing roof. Mr. Walters concluded by stating that all of the neighbors had been contacted and shown the plan and the applicants were not aware of any opposition to the modest addition they are requesting. Kathleen Scanlan, 71 Francis St., Brookline, project architect, said the deck is approximately 18 inches above the deck and the deck is accessed by an existing head house. She said the railing is three and one half feet above the deck.

Chairmen Starr asked whether anyone in attendance wished to speak in favor of the proposal. Joshua Gardener of 59 Alton Place apartment 2 rose to speak. Mr. Gardener said he was present at the condominium association meeting and the condominium association was supportive of the proposal. There was a letter submitted from Elizabeth Zambia of 14 Alton Court, who indicated she was opposed to roof decks in the neighborhood. The Chairman asked if anyone wished to speak in opposition to the proposal. David Starr of 4 Alton Court spoke on behalf of his neighbor Barbara DeVries who also lives at 4 Alton Court apartment 3. Mr. Starr said that 14 Alton Place is very close to 4 Alton Court. He said Ms. DeVries concerns are the noise and

general use issues of the proposed deck. Board Member Zuroff asked if 4 Alton Court has a roof deck. Mr. Starr said 4 Alton Court does have a roof deck.

Courtney Synowiec, planner delivered the findings of the Planning Board.

Section 5.30 – Maximum Height of Buildings – The maximum building height in an M-1.0 district is 35’. The building at 49 Alton Place is 31.2’ tall; however, because the building is attached to six other buildings that are all located on the same corner lot, mean natural grade must be measured from the street frontage having the lower record of grade thereby making the building height at 49 Alton Place 47’; 12’ in excess of the maximum height allowed for the zoning district. However, under **Section 5.31.2 – Exceptions to Maximum Height Regulations**, the Board of Appeals, may establish a different building height maximum by *special permit* where the interpretation of the height requirement is not clear as a result of non-typical lot shapes, topography, building alignment or configuration.

Section 5.50 – Front Yard Setback

Dimensional Requirements	Required	Existing	Proposed	Relief
Building Height	35'	47'*	47'	Variance/Special Permit*
Deck Front Yard Setback	15'	n/a	13'11"	Variance

* See discussion above.

** Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicants are proposing to install planters on the deck railings as a counterbalancing amenity.

Section 8.02.2 – Alteration or Extension

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

Ms. Synowiec said the Planning Board is supportive of this proposal. The applicants have worked extensively with staff to reduce the size of the proposed deck to reduce its encroachment within the front yard setback and from the sides of the building. However, due to the variance requirement for encroaching into the front yard setback and the applicants' ability to easily redesign the deck to maintain a 15' front yard setback, the Planning Board advised the applicant to alter their plans and comply rather than seek a variance. Finally, the Planning Board finds that the deck will have no visual impact on the streetscape, is designed so that roof repairs can easily be made and will be constructed of high quality materials.

Therefore, the Planning Board recommends approval of the survey by Neponset Valley Survey Associates and the unlabeled plans titled "Proposed Deck on Roof," dated 4/4/2012 and 4/29/12 respectively, 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 a final landscape plan indicating 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 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 stamped and signed by a registered architect; 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 that the Building Department was supportive of the proposed roof deck, and agrees with the Planning Boards recommendations. Chairman Starr asked Mr. Yanovitch if he was satisfied that the petitioner complied with the front yard setback. Mr. Yanovitch confirmed the front yard requirement was met.

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, after finding that adequate counter-balancing amenities were provided granted relief from **Sections 5.43** , **5.31.2**, 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, final plans and elevations indicating all salient dimensions and materials shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities to the Assistant Director of Regulatory Planning for review and approval.
3. 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 floor plans and building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

RECEIVED
 TOWN OF BROOKLINE
 TOWN CLERK

2012 JUN 22 A 11:4

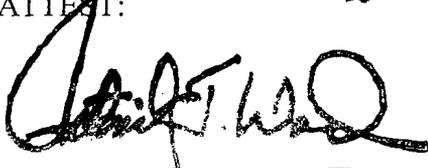
Unanimous Decision of
 Board of Appeals

Filing Date: June 22, 2012



Enid Starr, Chair

A True Copy
 ATTEST:



Patrick J. Ward
 Clerk, Board of Appeals