



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

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TOWN OF BROOKLINE  
**Town of Brookline**  
*Massachusetts*

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**Patrick J. Ward, Clerk**

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. BOA 2012-0052

Petitioner, Adam Riemer, applied to the Building Commissioner for permission to construct a garage with deck above and construct a roof deck at 1732 Beacon Street. The application was denied and an appeal was taken to this Board.

On August 30, 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 September 20, 2012 at 7:15 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 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 August 30, 2012 and September 6, 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: **Adam Riemer**

Owner: **Adam Riemer**

Location of Premises: **1732 Beacon Street**

Date of Hearing: **September 20, 2012**

Time of Hearing: **7:15 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. **5.09; Design Review; special permit required.**
2. **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
3. **5.60; Side Yard Requirements, variance required.**
4. **5.63; Accessory Buildings or Structures in Side Yards, variance require.**
5. **8.02.2; Alteration or Extension (Structure), special permit required.**

of the Zoning By-Law to **construct a garage with a deck above and construct a roof deck at 1732 Beacon Street.**

Said premise located in a **M-2.5 (apartment house) 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 Board Members, Enid Starr, Jonathan Book and Christopher Hussey. The case was presented by the attorney for the petitioner, Robert L. Allen Jr., 300 Washington Street, Brookline MA 02445. Also in attendance were the petitioner Adam Riemer and his architect John Wilde of Lafreniere Architects.

Mr. Allen described the property located at 1732 Beacon Street, Brookline, Massachusetts as a middle row house that was built in 1900. It is located in the block between Corey and Williston roads and Salisbury Road is located to the rear of the property separated by an alley. There are approximately 26 lots in this block and 1732 is one of only three remaining single family dwellings, surrounded by mainly multifamily dwellings. Mr. Allen explained that about two-thirds of the dwellings on the Salisbury road side have garages directly facing the alley, and about one half of the homes on the Beacon Street side have garages facing the alley. Mr. Allen commented that the other multifamily homes that do not have garages, have significant amount of cars parked in the rear yard. Nearly all of the properties on Beacon Street, including the subject property are zoned M-2.5, and the Salisbury Road properties across the alley to the rear of the subject property are zoned S-7.

Mr. Allen informed the Board that the Applicant purchased this single family home and has been living there for about a year and has already made significant improvements to the interior, and was now focusing on exterior renovations. Mr. Allen then called upon the architect to review the proposal.

Mr. Wilde outlined the Applicant's proposal to construct a two car garage in the rear of the property with a deck on top and a narrow connector from the building. A roof deck is also proposed. The rear garage was originally 19' from the rear property line but after a neighborhood meeting the proposal is to set it back 16 feet from the property line. The required set back (front yard) is 15 feet. The garage will have a 0' side yard setback on both sides, and will not have windows on the sides, per

Building Code. There will be a deck above the garage that will extend to connect the garage to an existing deck at the dwelling, making the roof deck over the garage accessible from the first level of the dwelling while providing protection from the elements when walking at grade from the garage. There will be a door installed on the rear of the garage that faces the dwelling, and it will open to a ground level courtyard and lead to the rear yard dwelling entrance. The original overhang for the walkway was six feet wide but after talking to neighbors it was reduced to 4'8" and the distance between the railings reduced to 4 feet. This walkway will connect the garage deck to an existing deck that will be rehabbed and extended only slightly. The original proposal was to have a larger deck against the dwelling immediately outside the doorway, but after hearing from neighbors, it was decided to rehab the existing deck. Mr. Wilde continued that the Applicant is also proposing to construct a roof deck on the dwelling that will be accessed by stairs from third floor, through a new skylight hatch. The roof deck will be set back from the front of the dwelling by 10 feet, and will not be visible from Beacon Street. The roof deck area will be surrounded by a 3.5' high fence.

Mr. Allen then described the zoning relief requested, stating that the applicant is seeking fairly minimal relief under 5.09 design review, 5.60 and 5.63 dimensional relief and 8.02.2 alterations to an existing building. As to design review, Mr. Allen stated that all the conditions have been met, and read from the Planning Board Report, *infra*, which spelled out the most relevant sections of the design review standards. As for dimensional relief, Mr. Allen suggested that pursuant to 5.43 the Board may waive yard and setback requirements if a counterbalancing amenity is provided. Here the applicant is proposing numerous landscaping elements that were supported by the Planning Board as well as the replacement of chain-link fence with an appropriate wood fence. There will be numerous planters on the decks, and the now bricked backyard will become open green space. As to Section 8.02.2, Mr. Allen proposed that: 1) The proposed site is an appropriate location for use. It is on an alleyway not visible

from Beacon Street, there are numerous other garages on the alley and this garage is set back to conform with the setback requirements; (2) The use will not adversely affect the neighborhood. The garage will allow vehicles to be hidden from view of neighbors, further, in many of the backyards where there are no garages, there are numerous cars parked in every direction, and this plan ensures to minimize cars parked in the rear of the premises; (3) there is no nuisance or serious hazard to vehicles or pedestrians; (4) Adequate and appropriate facilities will be provided for the proper operation and proposed use, and; (5) the proposal will not have a significant adverse effect on the supply on housing available for low and moderate income people. Attorney Allen concluded that there were six (6) letters of support submitted.

Chairman Starr asked whether anyone in attendance wished to speak in favor of or against the proposal. Two condominium owners, Steven Goldman, Esq., and Way Weiwen, who are immediate abutters at 1734 Beacon Street rose to speak of the concerns they had with the connection from the house to the garage deck stating that it would cause unnecessary noise outside their respective windows, and that they were not opposed to a deck above the garage if it was accessed by a stairway from grade level. Mr. Allen reiterated that the larger deck, originally proposed, was removed and the existing deck would be rehabbed, further the connection was not wide enough to become a “hanging out” spot, but would only serve to make the connection from garage to house and thus make the deck more desirable. Rabbi Naftali Horowitz, representing Rofeh Inc as owners of 1730 Beacon Street, rose to comment on the distance between the window of one of his units and the rear portion of the garage. The Rabbi expressed appreciation to the applicant for moving the garage forward three feet from the original proposal, however he still felt that the location of the garage would affect the air and light to that bedroom. Prior to receiving comment from the Board the Chair asked to hear from the Planning Staff.

Polly Selkoe, Planner, delivered the findings of the Planning Board.

**FINDINGS**

***Section 5.09.2.a – Design Review: Any exterior addition on Beacon Street for which a special permit is requested requires a special permit subject to the design review standards listed under Section 5.09.4(a-1). All the conditions have been met, and the most relevant sections of the design review standards are described below:***

a. Preservation of Trees and Landscape – The proposal will not result in the loss of any trees on the property because the site for the development is paved. The roof decks will result in the creation of additional landscaped area on the subject property.

b. Relation of Buildings to Environment – The new garage structure will be visually similar to the primary structure in the materials used. The applicant has proposed a single door on the garage, which is similar to garages in the vicinity. In the past the Board has preferred two door garages to preserve the historic and small town aspect of Brookline. The applicant has indicated a willingness to install a single garage door that has the appearance of a two door garage.

c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The proposed garage will not be visible from Beacon Street and will only affect the alley along the rear property line. There are multiple properties in the vicinity that have constructed garages along the rear property line. In some instances, the structures have been constructed directly on the rear yard property lines. The current proposal will be setback 19’.

d. Open Space – The total open space is expected to increase with the construction of a roof deck on the principal structure, and a roof deck on the proposed garage. There is an additional courtyard area that will count towards open space.

**Section 5.60 – Side Yard Setback**

**Section 5.63 – Accessory Buildings or Structures in Side Yards**

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Side Yard (East/West)</b>	6’	0’	0’	Special

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

\*\* Under **Section 5.63**, an accessory structure cannot be located closer than 6’ from the side property line.

**Section 8.02.2 – Alteration or Extension**

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

Ms. Selkoe stated that the Planning Board was split on its support of the applicant’s proposal to construct a garage with a roof deck, a deck connecting the garage deck to the main building, and a roof deck on the main dwelling. One Board member was not supportive because the abutter to either side

were opposed to the plan unless it was modified: the abutter to the east objected to the garage roof deck because of noise impacts; the abutter to the west, objected to the location of the garage, which would block a first floor window of a dwelling in his building. Another Board member, felt that too much decking was being proposed and that the connector deck should be eliminated. The two Board members in support of the garage and decks, as proposed, believed that the appearance of the rear of the property would be improved, especially by the greenery proposed for the garage roof and by enclosing the parked cars and felt that noise from the garage roof would not be an issue. Also, they felt that additional landscaping in the at-grade courtyard and new fencing meet the requirements for providing a counterbalancing amenity. No Board member was opposed to the deck on the roof of the main building. Therefore, the Planning Board was split 2-2 on the vote. However, if the Board of Appeals approves the plans by Lafreniere Architects, dated 8/24/2012, or modifications thereof, the following conditions are recommended:

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.

Chairman Starr then called upon Michael Yanovitch, Assistant Building Commissioner, to deliver the comments of the Building Department. Mr. Yanovitch reported that the Building Department did not have any problem with the proposal and if the Board was inclined to provide the

requested relief, that the Building Department would work with the Applicant to ensure that the proposal met all aspects of the building code.

Chairman Starr then called for comments from the Board. Board member Book stated that he had concern that both immediate abutters were in opposition. While he was less concerned about the noise issues brought up by the owners of 1734 Beacon, he did feel that the issues raised by 1730 regarding the proximity of the rear of the garage to the window needed to be addressed.

Chairman Starr then called on Board member Hussey, who informed the Board that he did a little research on the location of the sun and what affect the garage would have on light in the rear window at 1730 Beacon St. and concluded that, even in the winter solstice, when the sun is at its lowest altitude above the horizon, there will be no change to the existing conditions. Further Mr. Hussey found the plan to be very favorable, as it added additional landscape to an otherwise paved area and the walkway connecting the deck above the garage with the existing kitchen area was a creative way of ensuring the deck would get use. Chairman Starr agreed with Mr. Hussey and discounted the noise issues raised by the abutter and felt that the project was a significant improvement to the existing condition especially with the added landscaping elements. When Board member Book continued to express concern, Attorney Allen suggested a slight modification to the plan by moving the garage one foot closer towards the alley way, thereby giving additional distance between the window at 1730 Beacon Street and the proposed garage. Additionally, the Applicant would include plant material along the east side of the garage roof deck for added screening. Further, the Applicant would be willing to install a privacy screen on the west side of the connector deck to alleviate concerns of the 1734 Beacon abutter.

Board member Book felt that was a reasonable compromise.

The Board then determined, by unanimous vote that the requirements of **Sections 5.09, 5.43 and 9.05** of the bylaw had been met to warrant the grant special permits with respect to the requirements of **Section 5.60**, and **Section 5.63** of the bylaw. 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.
- e. The development as proposed will not have a significant adverse effect on the supply on housing available for low and moderate income people.

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 showing the garage located 15 feet from the rear property line and a privacy screen on the west side of the connector deck, 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, including plant material along the east side of the garage roof deck, 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 Board voted to modify Board of Appeals Decision #2557 (1982) to the extent necessary to be consistent with the relief granted by this decision.

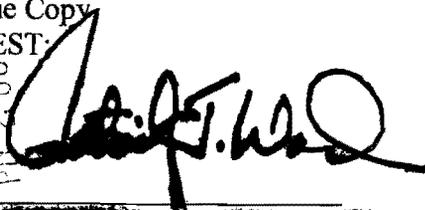
Unanimous Decision of  
The Board of Appeals



Enid Starr, Chairman

Filing Date: October 22, 2012

A True Copy  
ATTEST



Patrick J. Ward  
Clerk, Board of Appeals

STATE OF CONNECTICUT  
SOUTH BRITAIN  
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