



Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Christopher Hussey

# Town of Brookline Massachusetts

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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE

## TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 2012-0053

Petitioners, Ellen Messing and James Diskant, applied to the Building Commissioner to convert a one family dwelling into a two family dwelling. 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 on October 18, 2012, at 7:00p.m. in the Selectmen's Conference Room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, 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 September 27 and October 4 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: **MESSING ELLEN J DISKANT JAMES A**  
Owner: **MESSING ELLEN J DISKANT JAMES A**  
Location of Premises: **47 KILSYTH RD**  
Date of Hearing: **OCTOBER 18, 2012**  
Time of Hearing: **07:00 PM**  
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:

**4.03; Pre-Existing Special Permit Uses, special permit required.**  
**6.02, Paragraph 1, Table Off-Street Parking Requirements, special permit required.**  
**8.02.2; Alteration or Extension, special permit required.**  
**Modification, as necessary, of Board of Appeals Decision #2209**

Of the Zoning By-Law to convert 1 family to a 2 family dwelling  
at **47 KILSYTH RD**

Said premise located in a T-5 (**Two-Family and Attached Single-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.*

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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 Christopher Hussey and Jonathan Book. Charles Fox of 21 Myrtle Street, Jamaica Plain, architect, presented the case for the petitioner.

Mr. Fox said the property is located on the corner of Kilsyth Road and Windsor Road, in a neighborhood that primarily consists of multi-family housing. Many of the dwellings in the neighborhood have the outward appearance of single-family and two family dwellings. There is a condominium on the corner on the other side of Windsor Road, which is in Boston. The neighborhood was developed in the early 1900s as single family dwellings, but has since been converted to multi-family.

Mr. Fox said the proposal is to change the house from a one family dwelling into a two family. He said the house was originally a one family converted to a two family and then converted back to a single family circa 1995. The intention is to now turn the house back into a two family with minimal interior renovations and no exterior modifications. Mr. Fox said that the relief needed is related to the parking and the conversion.

Board Member Hussey asked for a clarification of the existing and proposed parking. Mr. Fox said there is no change in the existing parking. Petitioner Ellen Messing said she has lived there for fifteen years and the parking has never been an issue.

The Chairman asked if anyone present wished to speak in favor of the proposal. No one rose to speak. He chairman asked if anyone present wished to speak in opposition of the proposal. Ben Shamir of 44 Kilsyth Road rose to speak. Mr. Shamir asked for a clarification of the relief needed. Chairman Starr said the Parking relief would need a variance and not a special permit. Mr. Shamir said he does not have any particular position in favor of or in opposition.

The Chairman called on Timothy Richards, Planner, to deliver the comments of the Planning Board:

## **FINDINGS**

### **Section 4.03 – Pre Existing Special Permit uses:**

### **Section 6.02 – Off Street Parking Space Regulations:**

In 1978, the Board of Appeals approved a variance to parking regulations through case number 2209, which allowed 47 Kilsyth Road and 78 Windsor Road to share parking and to have 4 total spaces. At that time, the two properties were considered to be two-family dwellings. Later the subject property was converted to a single family use. The current proposal will convert the structure to a two-family dwelling once again. The number of parking spaces will not increase or decrease as a result of this proposal. Special permit relief is required due to the conversion of the dwelling back to a two-family use.

### **Section 8.02.2 – Alteration or Extension**

A special permit is required to alter a pre-existing non-conforming structure or use. Modification of the Board of Appeals decision, case number 2209.

### **Modification as necessary of Board of Appeals Decision #2209**

## **PLANNING BOARD COMMENTS**

Mr. Richard said the Planning Board supports this proposal, as the subject property is zoned for two-family use. Further, the dwelling has been used as a two-family dwelling in the past and was converted to a single family only for a short time. Parking relief was approved through case

number 2209 in 1978. The conversion of the dwelling from a single family use back to the previously approved two-family use is not anticipated to have negative impacts.

**Therefore, the Planning Board recommends approval of the plans by Frank Iebba, Surveyor, dated 6/8/2012, 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 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, to deliver the comments of the Building Department. Mr. Yanovitch said the Building Department has no issue with this request for relief and, if relief is granted, will work with the petitioner to ensure compliance with the Building Code as well as any conditions the Board may impose as part of their decision

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits and that the petitioner has satisfied the requirements necessary for relief under Sections 4.03, 8.02.2 and 9.05 of the Zoning By-Law , has modified BOA Case # 2209 as needed, and made the following specific findings pursuant to Section 9.05 of the Zoning By-Law:

- 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 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.

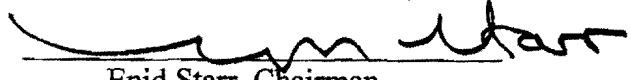
Unanimous Decision of

The Board of Appeals

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TOWN OF BROADMILL  
DOWN CLERK

2012 DEC - 5 11: 51

Filing Date: December 5, 2012



Enid Starr, Chairman

A True Copy

ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals