



Town of Brookline

Massachusetts

BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2011-0001

Petitioners, Jennifer Vasterling and Kevin Brailey, applied to the Building Commissioner for permission to construct a deck on a flat portion of their roof on the 3rd floor of their home at 123 Walnut Street. The application was denied and an appeal was taken to this Board.

On December 23, 2010, 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 January 27, 2011, at 7:15p.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 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 January 6 and 13, 2011 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:

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·Petitioner: **Jennifer Vasterling & Kevin Brailey**
Owner: **Jennifer Vasterling & Kevin Brailey**
Location of Premises: **123 Walnut Street**
Date of Hearing: **January 27, 2011**
Time of Hearing: **7:15 PM**
Place of Hearing: **Selectmen's Hearing Room, 6th. floor**

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

1. **5.43; Exceptions to Yard and Setback regulations, special permit required.**
2. **5.60; Side Yard Requirements, variance required.**
3. **5.70; Rear Yard Requirements, variance required.**
4. **8.02.2; Alteration or Extension, special permit required.**

Of the Zoning By-Law to **construct a deck on the roof at 123 Walnut Street.**

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.

**Enid Starr
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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 Zuroff. The Petitioner, Jennifer Vasterling, presented her case before the Board.

Ms. Vasterling said that when they purchased the property about a year ago, they found plans for a deck similar to the proposal before the Board. She said that in December 2009 that design

was approved by the Preservation Commission. She said that with minor modifications the Preservation Commission approved the current proposal on October 18, 2010.

Ms. Vasterling reported that her unit is one of two condominiums located at 123 Walnut Street. She said that it is a modest two family Queen Anne wood frame structure in the Pill Hill Local Historic District. It was constructed circa 1884 as a double house by Patrick Bowen, a carriage smith whose business was located on Boylston Street. The lot to the rear, which is at a much lower grade, fronts on Boylston Street, and is used as a parking lot for the adjacent residential and commercial uses; therefore, the rear deck on the subject house will be visible only from Boylston Street.

Ms. Vasterling said she and her husband, Kevin Brailey, are proposing to construct a deck on a flat portion of the roof on the 3rd floor north elevation (rear), facing Boylston Street. The deck, approximately 8' by 24', will be made out of ipe wood and have a three foot high black steel railing, with a gate leading to the existing fire escape. She said that the Preservation Commission approved a modification to the railing design to add a cross element on the top portion.

Ms. Vasterling said that they needed setback relief because the proposed deck infringed upon both the side and rear setback. She opined that this relief could be granted by special permit under Section 5.43 of the Zoning By-Law. Also, she said that since the home is pre-existing, non-conforming, relief was required under Section 8.02.2 as well. Since 5.43 requires counterbalancing amenities, she said that they propose to add planters to the deck.

The Chairman asked whether anyone in attendance wished to speak in favor or against the proposal. No one rose to speak

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

Section 5.60 – Side Yard Setback Requirements

Section 5.70 – Rear Yard Setback Requirements

Roof Deck	Required	Proposed	Finding
Side Yard	10 feet	7.8'	Var./Special Permit*
Rear Yard	30 feet	20' avg.	Var./Special Permit*

*Under **Section 5.43**, the Board of Appeals may waive yard and setback requirements if counterbalancing amenities are provided. The applicant is proposing to install landscaping.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a nonconforming structure.

Ms. Selkoe reported that the Planning Board supported the owner’s request to construct a roof deck on a flat portion of the rear roof, facing Boylston Street. The deck should have minimal impact to the side abutters and the rear lot, which has access from Boylston Street, is used as a parking lot. Since the building is located in a local historic district, the Preservation Commission has already reviewed and approved the design of the deck with a minor modification to the railing. To satisfy the required counterbalancing amenity for the special permits, the applicant will install landscaping. Therefore, the Planning Board recommended approval of the plans, prepared by Timothy Burke Architecture and dated 17, September 2010, subject to the following conditions:

1. Prior to issuance of a building permit, final elevations shall be submitted to the Preservation Commission for review and approval, with a copy of the approved plans forwarded to the Planning Division.
2. Prior to issuance of a building permit, a final landscaping plan, indicating all counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site

plan, stamped and signed by a registered land surveyor or engineer; 2) final building elevations, stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard stated that addition appeared well designed and the Building Department supported the requested relief as well as the conditions recommended by the Planning Board.

During deliberations, Board Member Zuroff noted that the neighbors were in support of the proposal and he was inclined to grant the requested relief. After clarification regarding the counterbalancing amenities, Board Member Geller said the he was also was in favor of granting the requested relief for the proposal.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that all the requested relief could be granted by special permit. The Board found that that the petitioner has satisfied the requirements necessary for relief under **Sections 5.43, 8.02.2, and 9.05** of the Zoning By-Law 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 issuance of a building permit, final elevations shall be submitted to the Preservation Commission for review and approval, with a copy of the approved plans forwarded to the Planning Division.
2. Prior to issuance of a building permit, a final landscaping plan, indicating all counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered land surveyor or engineer; 2) final building elevations, stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

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Unanimous Decision of
 The Board of Appeals



Enid Starr, Chairman

Filing Date: February 01, 2011

A True Copy
 ATTEST:



Patrick J. Ward
 Clerk, Board of Appeals