



RECEIVED

MAY 25 AM 9: 52
PLANNING DEPT.
TOWN OF BROOKLINE

Town of Brookline Massachusetts

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

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. 2011-0017

Petitioners, Jagdish K. Dhingra and Meera Mahalingam, applied to the Building Commissioner to modify the rear setback encroachment allowed in Board of Appeals case # 2010-0030 involving property at 104 Coolidge Street. The application was denied and an appeal was taken to this Board.

On March 3, 2011, 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 April 7, 2011 at 7:00 p.m. in room 111, first floor, Town Hall 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 March 24 and 31, 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:

Petitioner: MAHALINGAM, MEERA & DHINGRA, JAGDISH

Owner: MAHALINGAM, MEERA & DHINGRA, JAGDISH

Location of Premises: 104 COOLIDGE ST

Date of Hearing: APRIL 07, 2011

Time of Hearing: 7:00 p.m.

Place of Hearing: Room 111, First floor of Town Hall

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

Modification of BOA case #2010-0030: Legalization of additional 6" encroachment into rear yard setback by conservatory addition.

of the Zoning By-Law to **PROPOSED CONSERVATORY REQUIRING BOARD OF APPEALS RELIEF AT 104 COOLIDGE ST.**

Said premise located in a **T-5 (two-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
Robert De Vries**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members, Jonathan Book and Lisa Serafin. The case was presented by Drew Hale of Sunspace Design Inc., 264 Salem Road Billerica, MA 01821-2156. Mr. Hale is the Construction Supervisor for the project.

Mr. Hale reported that the Board of Appeals at a 5 August, 2010 hearing, reviewed and approved a proposal to construct an observatory and deck within the rear yard setback at 104 Coolidge Street. As a requirement of that relief, Mr. Hale submitted final plans to Planning Board staff for review and approval. The plans were subsequently approved on 18, November, 2010. During the initial course of construction, he said, the structure for the addition was built six inches closer to the lot line than was originally approved. Mr. Hale discovered this anomaly, stopped work, and contacted the Building Department to address the error. Mr. Hale is now before the Board seeking a modification of the previous relief granted to his clients, Jagdish K. Dhingra and Meera Mahalingam to allow for the additional six inch encroachment into the rear yard setback.

Chairman Geller asked whether anyone in attendance wished to speak in favor of or against the proposed relief. No one spoke in favor of or against the proposed relief.

Polly Selkoe, Assistant Director for Regulatory Planning, reported that the Planning Board had reviewed the proposed modification at its 24, March, 2011 meeting and recommended approval of the As-Built plans by Everett M. Brooks Company, dated 2/24/11, as submitted.

The Chairman then called upon Michael Shepard, Building Commissioner, for the report from the Building Department. Mr. Shepard reported that sunroom had been constructed and only then was the encroachment issue discovered. He said that the Contractor, on his own volition, contacted the Building Department for guidance. He voluntarily halted completion of the project until the issue was resolved by this Board so as limit the exposure to his clients and himself. Mr. Shepard reported that occasionally issues such as this arise, but thankfully, not often. Mr. Shepard recommended that the Board consider the grant of the additional encroachment into the required rear-yard setback.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that it was desirable to grant the requested modification of the previously granted relief in Board of Appeals case #2010-0030. As to the further six inch encroachment into the rear yard setback, the Board made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

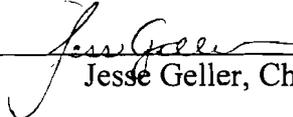
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

Accordingly, the Board voted unanimously to modify Board of Appeals Case #2010-0030 allowing the further six inch reduction in the rear yard set back as depicted in the As-Built plans by Everett M. Brooks Company, dated 2-24-11. In all other respects, the original Decision in Board of Appeals Case #2010-0030 shall remain in full force and effect.

The Board reminded the petitioner that the modification granted is conditioned on timely recording of the modification decision with the Norfolk County Registry of Deeds after the statutory appeal period has lapsed.

Unanimous Decision of
The Board of Appeals

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
Filing Date: May 20, 2011
2011 MAY 20 12:25



Jesse Geller, Chairman

A True Copy

ATTEST:

A handwritten signature in black ink, appearing to read "Patrick J. Ward". The signature is written in a cursive style with a large initial "P" and a distinct "W".

Patrick J. Ward
Clerk, Board of Appeals