



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

# *Town of Brookline*

## *Massachusetts*

Town Hall, 1<sup>st</sup> 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. 2011-0043

Petitioners, Gerard and Leslie Leblanc, applied to the Building Commissioner for permission to construct, in cooperation with their neighbor, Mr. Bristol, two decks atop their building at 94 University Road. The application was denied and an appeal was taken to this Board.

On July 21, 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 September 22, 2011, at 7:30 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 September 1 and 8, 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: LEBLANC, GERARD & LESLIE**  
**Owner: LEBLANC, GERARD & LESLIE**

Location of Premises: **94 UNIVERSITY RD 3**  
Date of Hearing: **September 22, 2011**  
Time of Hearing: **7:30 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. 5.43; 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 TWO DECKS ATOP THE BUILDING AT 94 UNIVERSITY ROAD IN COOPERATION WITH YOUR NEIGHBOR at 94 UNIVERSITY ROAD 3.**

Said premise located in a **M-1.0 (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  
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 Lisa Serafin and Mark Zuroff. The case was presented by the consultant for the petitioner, Mr. Robert Tildsley of RWT Consulting, 114 Dwinell Street, Boston, MA 02132.

Mr. Tildsley described the site and neighborhood of 94 University Road as being located on the north (downhill) side of the road midway between Washington Street and Beacon Street. The property has a

brick attached four-unit dwelling with a large curved front bay and flat roof. The neighboring attached dwelling mirrors the one at #94. A concrete walk along the side of the building allows for access to the basement level unit and the rear of the property. There are wooden decks at each floor at the rear of the building. Surrounding properties largely consist of two- and three-family dwellings, although a large multi-family condominium building exists to the rear.

Mr. Tildsley said that his client wishes to construct two decks on the dwelling's flat roof. The decks would be for the upper two units of the building. He said that they have revised the plans to reduce the overall size of the decks and pull them in further from the building's edge. The front deck would now be approximately 18 feet deep by 12.5 feet wide (a reduction from 19'4" deep by 18'3" wide), and the rear deck would be 12 feet deep by 13 feet wide (a reduction from 15'5" wide by 15' deep). A three foot wide walkway would still connect the two decks. A new exterior stair at the rear of the building would provide access. Although still considering railing options, Mr. Tildsley said that they had submitted examples to the Planning Staff and the type of lighting that will be used on the deck and stairs. Mr. Tildsley noted that the only violation of the Zoning By-Law for which relief is required is due to a one (1) foot violation of the rear yard set back requirement and which may be permitted by grant of a special permit.

Board Member Zuroff asked why the owners desired to construct the decks on top of their building. Mr. Tildsley replied that the existing decks on the rear of the building are small and dark. He said the rooftop decks would provide better light and air as well as a better view. In response to another question from Mr. Zuroff, Mr. Tildsley reported that none of the neighboring properties' privacy would be compromised with the construction of the decks. In response to a question about safety, Mr. Tildsley reported that they were installing a pull station and horn on the deck to be interconnected with the building alarm system.

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

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

**Section 5.60 – Side Yard Setback**

**Section 5.70 – Rear Yard Setback**

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Proposed</b>	<b>Relief</b>
<b>Side Yard Setback (deck)</b>	8 feet	8 feet	Complies
<b>Rear Yard Setback (deck)</b>	15 feet	14 feet	Special Permit*

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

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter a pre-existing non-conforming structure. This structure is nonconforming with respect to front, side and rear yard setback.

Ms. Synowiec reported that the Planning Board was not opposed to the proposed roof decks; the dwelling's roof is so high above its neighbors that the Board does not expect there will be significant impacts from the decks on abutting properties. Additionally, in response to comments from the Board, the applicant has reduced the overall size of the decks and pulled them in from the building's front and side edges, limiting their visibility. She said that the applicant is considering modest lighting for the decks and stairs that should not result in minimal illumination impacts on neighbors; however, final design details regarding the decks' railings and lighting should be submitted for staff review prior to receiving a building permit. Also, should the applicant at a later date wish to cover the roof decks or build a roof-top storage shed, the applicant should return to the Planning Board and the Board of Appeals to determine whether additional zoning relief is needed and to allow for review of the new features. Therefore, the Planning Board recommends approval of the submitted plans, dated 8/25/2011 and 8/26/2011, subject to the following conditions:

1. Prior to the issuance of a building permit, final plans and elevations indicating all relevant dimensions and materials for the decks, stairs and railing shall be submitted and shall be subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to issuance of a building permit, final details regarding the appearance and location of the proposed lighting shall be submitted and shall be subject to the review and approval of the Assistant Director of Regulatory Planning.
3. No portion of the decks shall be covered, with decorative roofing or otherwise, nor shall any storage structure be constructed on the roof, prior to seeking relief from the Board of Appeals.
4. 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 engineer or architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Shepard, Building Commissioner, for the report from the Building Department. Mr. Shepard reported that the Building Department is often not supportive of rooftop decks. He said that in this instance, where condominiums were involved, the likelihood of loud parties, boisterous behavior or the presence of grilling equipment is greatly reduced. He noted that the petitioner had the right to use the deck in his condominium documents and they have been very cooperative in scaling down the size to be more in line with required setbacks. He said that his office will review the submitted construction documents to assure compliance with the State Building Code. Mr. Shepard said that the Building Department was supportive of the proposal as well as the requested relief.

During deliberations, the Board determined that the amount of relief required was minimal and agreed to grant the requested relief.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that it was desirable to grant special permit relief from **Section 5.43** and **8.02.2** of the Town of Brookline Zoning By-Law. and the Board also 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, final plans and elevations indicating all relevant dimensions and materials for the decks, stairs and railing shall be submitted and shall be subject to the review and approval of the Assistant Director of Regulatory Planning.**
2. **Prior to issuance of a building permit, final details regarding the appearance and location of the proposed lighting shall be submitted and shall be subject to the review and approval of the Assistant Director of Regulatory Planning.**
3. **No portion of the decks shall be covered, with decorative roofing or otherwise, nor shall any storage structure be constructed on the roof, prior to seeking relief from the Board of Appeals.**
4. **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 engineer or 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

OFFICE OF THE CLERK  
 BOARD OF APPEALS  
 100 STATE STREET  
 20100  
 12/5/11

  
 Jesse Geller, Chairman

Filing Date: December 5, 2011

A True Copy

ATTEST:

  
 Patrick J. Ward  
 Clerk, Board of Appeals