



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

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TOWN OF BROOKLINE

Town of Brookline

Massachusetts

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Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2010-0013

Petitioner, Robert Grinberg, applied to the Building Commissioner for permission to keep chickens on his property at 30 Crammond Road. The application was denied and an appeal was taken to this Board.

On 7 January 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 13 May 2010 at 7:00 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 his 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 22 and 29 April 2010 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:

Petitioners: ROBERT GRINBERG
Owner: Robert Grinberg

Location of Premises: **30 Crammond Road**

Date of Hearing: **05/13/2010**

Time of Hearing: **7:00 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6th. floor**

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

Use #57, Table 4.07; Variance Required.

5.43; Exceptions to Yards and Setback Regulations, Special Permit Required
of the Zoning By-Law to be able to keep poultry per plans at **30 CRAMOND RD BRKL.**

Said Premise located in an **S-40** (single family) 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
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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, Jesse Geller and board members Jonathan Book and Christina Wolfe. Mr. Grinberg presented his case before the Board.

Mr. Grinberg said his home was located on a large lot in South Brookline. His property is adjacent to a flag lot resulting in two residential abutters on the side of the lot where his chickens are kept; there is one abutter to the rear, and one to the other side of the lot. He said that the yard is fenced with a 6' wooden privacy fence and has dense vegetation along the lot lines.

Mr. Grinberg said that he would like to legalize the keeping of 10-12 hens approximately 20' from the side lot line and 57' from the street and to do so requires the Zoning Board of Appeals

to issue a special permit under Section 5.43 of the Zoning By-Law. The chickens are kept in two coops behind the privacy fence, and are situated approximately 180' from the nearest neighboring residential structure. While recognizing that he has a large lot, and could likely relocate the chickens so they are not within 100' of a street, Mr. Grinberg reported that the chickens are appropriately situated so as not to disrupt their neighbors. In addition, Mr. Grinberg noted that the existing coops were constructed on concrete pads to protect the chickens from predators and therefore relocation would require removal of the existing pads and construction of new ones. Mr. Grinberg further noted that they have had the chickens for over three years without any complaints and that both the Building Department and the Health Department have inspected the coops.

Chairman Geller asked Mr. Grinberg to identify the proposed counterbalancing amenities required for relief under **Section 5.43** of the Zoning By-Law. Mr. Grinberg reported that he is working with the Planning Department to provide suitable additional landscaping. Mr. Geller asked whether there was any audible noise from the chickens. Mr. Grinberg responded that there was no noise that any of the neighbors could hear.

Mr. Grinberg provided color photographs of existing conditions and these were entered into the record as Exhibits 1-3. He also provided a plot plan which was entered as Exhibit 4.

The Chairman then asked whether there was anyone in the audience that wished to speak in support of, or against the requested relief. No one rose to speak.

Courtney Synowiec, Planner, delivered the findings of the planning department staff.

Table of Use Regulations, Sec. 4.07, Use # 57 – Keeping chickens is an allowed use but their enclosure must be 100 ft. or greater from a residential building site.

Dimensional Requirements	Required	Existing	Proposed	Relief
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Street Setback	100'	52'-57'	52'-57'	Special Permit*
Res. Building Setback	100'	Est. 180'	Est. 180'	Complies

* Under **Section 5.43**, the 100 foot setback may be waived by **special permit** to allow a lesser setback if a counterbalancing amenity is provided. The applicant is proposing to install additional landscaping as a counterbalancing amenity.

Ms. Synowiec reported that the Planning Board was supportive of this proposal. The Planning Board felt that because the applicant could comply with the animal keeping regulations if they moved the coop, the issue before them was not particularly whether or not the applicant could keep chickens, but where they were most appropriately situated. The Planning Board felt the applicant had located the chickens in such a way so as to minimize and mitigate the visual and auditory impacts on neighboring properties. The applicant was not brought to the attention of the Building and Planning Department by complaint regarding the chickens, and it appears the presence of the chickens over the past three years has not resulted in any significantly detrimental impacts to the neighborhood. Therefore, she said that the Planning Board recommended approval for the special permit to keep chickens, provided that any conditions attached to the Health Department's license for the keeping of animals are also included in the Board of Appeals decision, in addition to the following conditions:

1. The relief shall be limited to twelve hens and shall expire five years from the filing date of the Board of Appeals decision unless extended at a Public Hearing at the Board of Appeals.
2. Within 19 days of the Board of Appeals decision being filed, the petitioner shall submit to the Assistant Director for Regulatory Planning, a landscape plan showing additional planting to help ameliorate some neighborhood concern relative to screening.
3. The petitioner shall submit to the Building Commissioner, proof of recording of the decision at the Norfolk County Registry of Deeds within 45 days of filing date of the Board of Appeals decision.

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. Mr. Shepard stated that the subject property is well established and extremely well maintained. He reported that the chickens are kept in a clean, well organized area in well designed coops. He said that is highly unlikely that any of the neighbors can see or hear the chickens due to the extensive foliage, fencing and separation between the homes. While supportive of the conditions recommended by the Planning Board, Mr. Shepard opined that the five year expiration seemed somewhat onerous due to the costs incurred by returning to the Board and the fact that the Health Department would, as one of their conditions, be making unannounced visits to ascertain the status of the chickens.

During deliberations Mr. Book said he was in favor of the relief and thought it entirely appropriate to retain the five year review requirement as recommended by the Planning Board. He opined that the required license from the Board of Health adequately provides protections for the neighbors regarding noise and smell. Board Member Wolfe, said that she too supports the requested relief although she didn't see the need for the petitioners to return to the Board in five years. The Chairman stated that the five year review condition would provide assurance for one neighbor that expressed concern about the chickens.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant a Special Permit and that the petitioner will satisfy the requirements of **Section 5.43** of the Zoning By-Law on providing additional landscaping as a counterbalancing amenity, and makes the following 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. The relief shall be limited to twelve hens and shall expire five years from the filing date of the Board of Appeals decision unless extended at a Public Hearing at the Board of Appeals.
2. Within 19 days of the Board of Appeals decision being filed, the petitioner shall submit to the Assistant Director for Regulatory Planning, a landscape plan showing additional planting to help ameliorate some neighborhood concern relative to screening.
3. That the petitioner is bound by the proposed conditions provided by the Director of Public Health attached as part of and incorporated by reference into this decision.
4. The petitioner shall submit to the Building Commissioner, proof of recording of the decision at the Norfolk County Registry of Deeds within 45 days of filing date of the Board of Appeals decision.

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Unanimous Decision of
The Board of Appeals


Jesse Geller, Chairman

Filing Date: June 7, 2010

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals



Town of Brookline Massachusetts

11 Pierce Street, Massachusetts 02445
(617) 730-2300 fax (617) 730-2296

*Alan Balsam Ph.D, MPH
Director of Public Health
and Human Services*

KEEPING OF ANIMALS 2010-2011

PROPOSED CONDITIONS

Location: 30 Crammond Road

Conditions:

- 1. Limit of 12 chickens. (no roosters).**
- 2. An enclosed pod and pen for chickens must be constructed as outlined in submitted plans. Panned area may be chicken wire. The Panned area must be covered over the top. Chickens will be restricted to the pod and enclosed pen at all times.**
- 3. Feeding of birds shall occur only in the pod and pen. Manure must be cleaned up regularly and composted in an approved composting environment or otherwise disposed of in a sanitary manner. If disposed of off-site department must approve of location.**
- 4. Maintain good hygiene practices after contact with chickens.**
- 5. Report sick chickens to Brookline Health Department (617-7302300) and Massachusetts Department of Food and Agriculture Division of Animal Health (617-626-1792) immediately. Report any animal attacks on chickens to Brookline Health Department.**
- 6. The pest control management plan must be submitted as a permit condition.**
- 7. As part of the Keeping of Animals permit the Health Department will perform routine, unannounced inspections to ensure compliance with these permit conditions.**