



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

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

**TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2010-0018**

Petitioner, Michael Siegel applied to the Building Commissioner for permission to construct an addition to his new home at 224 Walnut Street. The application was denied and an appeal was taken to this Board.

On 8, April, 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 3, June, 2010, at 7:15 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 13 and 20, May, 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:

Petitioner: **Michael Siegel**
Owner: **Michael Siegel**

Location of Premises: **224 Walnut Street**

Date of Hearing: **06/03/2010**

Time of Hearing: **7:15 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:

1. **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
2. **5.53; Accessory Buildings in Front Yards, variance required**
3. **5.55; Front Yard for Rear Lot, variance required.**
4. **6.04.5.c.1; Design of All Off-Street Parking Facilities, variance required.**
5. **6.04.12; For the Design of All Off-Street Parking Facilities, special permit required.**
6. **8.02.2; Alteration or Extension, special permit required**

Modification, as required, of BOA case# 2774, dtd. 11 July 1986

of the Zoning By-Law to add an addition to existing structure per plans at **224 WALNUT ST BRKL.**

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 Mark Zuroff. Mr.

Siegel accompanied by his Architect, Terrence G. Heinlein of 1 Aberdeen Road, Weston, MA, presented his case before the Board.

Mr. Siegel said that in 1985 two lots on Walnut Street, number 222 and the lot before the Board, 224, were created by Approval Not Required Plan. He also noted that the Preservation Commission issued a Certificate of Appropriateness for his proposed addition including the carport structure.

Mr. Siegel said that 224 Walnut Street is a single-story single-family dwelling on a rear lot in the Pill Hill Local Historic District. A common driveway, shared by his dwelling and the dwellings at 220, 222, and 230 Walnut Street, provides access. He described 224 Walnut Street as a "Core House," designed by Edward Cuetara and built in 1956 by Dr. Edward Frank. Mr. Cuetara worked at The Architects Collaborative (TAC) during the 1950s and 1960s, and his *The Core House* company sold modular houses based on a TAC prototype for a "system for flexible planning and construction of housing." This dwelling is one of two known core houses in Brookline; there is another at 110 Fairway Road. Neighboring dwellings are also primarily single-family in nature, but typically larger in size. 224 Walnut Street currently has approximately 1,600 s.f. of finished floor area. A low wooden fence runs along the front lot line, dividing it from the shared parking area.

Mr. Siegel said that due to the size of his family he wishes to construct a 1,501 s.f. single-story addition that will wrap around the rear and side of the dwelling. The addition would extend 16.5 feet back (to the south) and 16.5 feet to the side (on the west elevation). A new screened in porch, 12 feet deep by 13 feet 4 inches wide, would also be part of the rear addition. The addition would be distinguished from the existing building by a 2.5 foot-offset, and finished in the same materials as the existing structure: plywood and red cedar siding. Mr. Siegel said that he wishes

to extend the current common driveway shared by neighboring properties in front of the dwelling and create a two-car-wide parking area with an open carport structure. The new carport would be 14 feet 6 inches wide and approximately 26 feet deep, constructed of the same materials as the existing dwelling, and have a front yard setback of 6 feet one inch. Three sides of the carport would be open to the elements, and the fourth side would be used for storage.

Regarding counterbalancing amenities, Mr. Siegel said that he plans to plant a significant number of fruit trees including apple, cherry and plumb as well as raspberries and blackberries and kiwis.

Board Member Zuroff asked the petitioner about the parking and access accommodations to his lot. Mr. Siegel said that he had a 25 foot wide road that runs parallel to an identical road owned by his neighbor at 222 Walnut Street. The abutting properties also use this way as access to their properties as well. Mr. Siegel reported that over time the accesses, both his and his neighbors have been encroached upon by landscaping effectively limiting the traveled way to his 25 feet. Mr. Siegel said that in order to insure access for emergency vehicles as well as convenience for bringing in groceries and school backpacks he planned to use the carport on his property and reduce the use of the existing parking in the access road.

The Chairman asked whether anyone wished to speak in favor of the application before the Board. Hearing no response he asked whether anyone wished to speak in opposition to the application. Mr. Peter Knox of 222 Walnut Street, a direct abutter rose to address the Board. Mr. Knox said that in his years of living at his address the parking situation has always been quite amicable. He said that he as well as the former owners at 224 Walnut Street parked behind a relatively low, about 4 foot, stockade fence and walked to the two homes, 222 and 224. He said with this arrangement neither home was inconvenienced by vehicles negotiating near the

homes. He said that although his home is higher, he could be distracted by headlights entering the property at 224 Walnut Street. As to parking on the 25 foot way he said only occasionally do neighbors have to be notified to move their vehicles. Mr. Knox said his main objection was the extension of asphalt and gravel to accommodate the needs of his new neighbor. He opined that putting a new driveway in an area that is prime landscaping area was not prudent. Mr. Knox provided photographs of the conditions at the site. One of the photographs depicted two out of the three cars requiring access to the site including his own. Other photos depicted the front of 224 Walnut Street and the fence at the top of the access Road. Mr. Knox stated that although his easement goes all the way to and past his house, he has never found the need to drive beyond the fence. He said that among the attributes to his and Mr. Siegel's lots was that cars were stopped short of the immediate vicinity of the homes. Mr. Know requested that the Board deny the application for a driveway extension and carport and grandfather Mr. Siegel's rights to park at the top of the access road. He said however that should the Board consider granting the request for relief that they require the petitioner to erect a fence similar to that which exists from his fence to the home at 224 Walnut Street. Mr. Knox stated that since his home is considerably higher than Mr. Siegel's home, he didn't expect headlight glare to be of any particular concern.

Board Member Book asked for clarification as to where Mr. Knox parked his vehicle and Mr. Knox, again referring to the photographs, explained his parking procedure. Mr. Book asked whether increased landscaping could take the place of the fence requested by Mr. Knox. He responded that a fence would fit in better and be a better barrier to the occasional dog or solicitor visiting in the neighborhood.

The Chairman entered the five pictures provided by Mr. Knox as exhibits 1 through 5.

The Chairman gave the petitioner the opportunity to respond to the concerns raised by Mr. Knox. The project architect, Terrence Heinlein said that the additions proposed by Mr. Siegel were designed in such a way as to preserve the existing views of the house given its architectural importance. He said that as you approach the house currently it is not clear which is the front and side door. He said the carport was intentionally positioned to take advantage of and at the same time hide the side door thereby bringing attention to the main front entrance. He said they pushed the carport further to the West than planned so less of the façade exposed to Walnut Street was obscured. Mr. Siegel said that he was confused as to the relationship between gardening, landscaping and fencing. He opined that both he and Mr. Knox were both in favor of more green space and he felt he could accommodate this concern better with increased landscaping than another fence. Mr. Siegel pointed out to the Board that since Mr. Knox is not in residence at 222 Walnut Street for six months of the year, he doesn't get to partake in the icy conditions or snow removal necessitated by parking so far from one's home. He also said that Mr. Knox allows the abutters to his 25 foot strip to landscape a portion of it thereby increasing the traffic on his, Mr. Siegel's side. Mr. Siegel reported that the landscaping he has planned as well as the green, energy efficient materials and construction techniques he intends to employ, will result in an overall improvement in the neighborhood and the addition of a fence as suggested by Mr. Knox will only distract from these improvements.

Mr. Book asked about the plans for the existing fence at the top of the access road. Mr. Siegel said that the fence may disappear, there may be a gate; he said that they are not far enough along with the plans in this area to give a definitive answer. He did state that there would definitely be no more fence there than currently exists. Mr. Book asked about headlight glare

and Mr. Heinlein responded that Mr. Knox’s house is one full story above Mr. Siegel’s and headlight glare should not be an issue.

Courtney Synowiec, planner delivered the findings of the Planning Department staff.

Section 5.53 – Accessory Buildings in Front Yards: Accessory buildings shall not be permitted within required front yards.

Section 5.55 – Front Yard for Rear Lot: Since this lot is considered a rear lot, the front yard depth shall not be less than the minimum rear yard requirement.

Section 6.04.5.c.1 – Design of All Off-Street Parking Facilities: Parking facilities shall be set back from the front lot line the distance specified for minimum front yard setback.

Section 6.04.12 – Design of All Off-Street Parking Facilities: The Board of Appeals may by special permit substitute other dimensional requirements for parking facilities that are necessary to allow for the installation of off-street parking spaces for existing structures.

Section 8.02.2 – Alteration or Extension: A special permit is required to alter a non-conforming pre-existing structure. This structure is non-conforming as to front yard setback.

Building/Front Yard Setback	Required	Existing	Proposed	Finding
Carport	30 feet†	n/a	6' 1"	Variance/Special Permit*
Parking Area	30 feet†	n/a	6' 1"	Special Permit**
Building Addition	30 feet†	24' 6"	27'	Special Permit*

†Since this property is considered a "rear lot" under Section 5.55, the front yard requirement for this lot, normally 20 feet in S-10 districts, is increased to be the same as the rear yard requirement of 30 feet.

*Under Section 5.43, the Board of Appeals may by special permit substitute other dimensional requirements for those required that will assure the same standard of amenity to nearby properties in return for the provision of counterbalancing amenities. In this case, the applicant is proposing the planting of new fruit trees between the proposed parking area and the front lot line as a counterbalancing amenity.

**Under Section 6.04.12, the Board of Appeals may by special permit waive the dimensional requirements of Article 6 where new parking facilities are being installed to serve existing structures and land uses.

Ms. Synowiec reported that the Planning Board was supportive of this application for a new addition and a new parking area and carport. The addition’s design complements the existing structure, and does not substantially impact the front yard setback. The applicant has respected

the concerns of the Preservation Commission to largely preserve what is considered the actual front of the dwelling, which is the east façade, not the north façade where the proposed parking area would be located. The proposed parking area would help lessen congestion in the current common driveway, which is where vehicles currently park. One of the main intentions of front yard setback restrictions for parking areas and accessory structures is to limit the impact on the streetscape; in this instance, creating parking spaces away from the common driveway will actually lessen use of the common driveway parking and thus the impact on the street. This will better preserve the view of the building considered most important by the Preservation Commission. The carport design is practical and relates well to the existing dwelling. Therefore, the Planning Board recommended approval of the proposal and the plans, including the proposed site plan, floor plan, and elevations, prepared by Terrence G. Heinlein and dated 4/1/2010, 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 site and 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 noted that lots, 222 and 224 were relatively obscured from view from Walnut Street. The lots therefore enjoyed their own neighborhood.

Mr. Shepard stated that at the time 224 Walnut Street was constructed it utilized cutting edge materials and construction techniques. He said Mr. Siegel intends to utilize current techniques to extend the advantages of the home. Mr. Shepard noted that he has been to Mr. Siegel's current property and noted that it is very well maintained and extensively planted. Mr. Shepard said that the Building Department supported the proposal that the carport would act as a further screen on the front of the property as well as reducing the parking use on the apparently overloaded access way.

Mr. Book during deliberation opined that the addition and carport are appropriate for the lot. He said that the lot was relatively large and there would still be a considerable amount of open space even after the addition was constructed. He said he had some concern regarding glare from headlights and he thought it should be addressed although he said he was not sure how it would be addressed. He said he thought it could be part of a condition, should the Board vote favorably on this request, that it be subject to the approval of the Assistant Director for Regulatory Planning.

Mr. Zuroff noted that the approaching or departing headlights would not be directed into Mr. Knox's house but into a hill. He said any glare could be addressed in a landscaping plan. The Chairman too expressed concern regarding screening, although he was not convinced it had to be in the form of a fence. He also questioned the ability of the Assistant Director for Regulatory Planning to determine whether there was glare. Mr. Geller also noted that the installation of a fence might require additional Preservation review while plantings would not.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits in accordance with Section 5.43, 6.04.12 and 8.02 and makes the following findings pursuant to Section 9.05:

- 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.

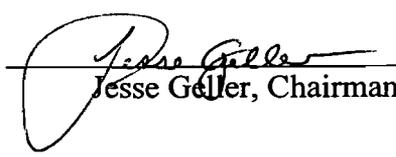
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 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 site and landscaping plan, indicating all counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 3. **Prior to the issuance of a Certificate of Occupancy, the Assistant Director for Regulatory Planning shall inspect the premises for incidence of increased vehicular glare and upon such determination shall require some type of appropriate screening to ameliorate the condition. Subject screening, if any, to be installed by the petitioner.**
- 4. **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.**

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

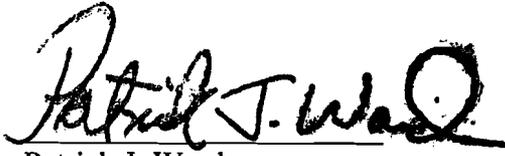
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Unanimous Decision of
the Board of Appeals


Jesse Geller, Chairman

Filing Date: August 10, 2010

A True Copy
ATTEST:

A handwritten signature in black ink that reads "Patrick J. Ward". The signature is written in a cursive style with a large, looped initial "P" and a distinct "Q" at the end.

Patrick J. Ward
Clerk, Board of Appeals