



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

Town of Brookline

Massachusetts

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. 2010-0024**

Petitioners, Dorian Mintzer and David Feingold, applied to the Building Commissioner for permission to legalize an existing professional office in their home at 23 Cypress Street. The application was denied and an appeal was taken to this Board.

On May 13, 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 July 1, 2010 at 7:00 p.m. in the Selectmen's Hearing Room, 6th floor, Town Hall, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to the 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 June 17 and 24, 2010 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

**LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEAL
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: DORIAN MINTZER & DAVID FEINGOLD

Owner: DORIAN MINTZER & DAVID FEINGOLD

Location of Premises: 23 CYPRESS ST

Date of Hearing: July 01, 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

- 1. 4.05.b.1; Restrictions on Accessory Uses In Residence Districts, office parking provisions of Section 6.02, special permit required.**
- 2. 4.07; Table of Use Regulations, Use #59, special permit required.**
- 3. 8.02.2; Alteration or Extension, special permit required.**

Of the Zoning By-Law to add an office within a residence req Use#59 relief per plans at 23 CYPRESS STREET 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
Robert De Vries**

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, Mark Zuroff and Jonathan Book. The petitioners, Dorian Mintzer and David Feingold, presented their case before the Board.

Dr. Mintzer. described her home at 23 Cypress Street as the center townhouse in a group of three located near the intersection of Cypress and Washington Streets, immediately next to the CVS

parking lot. The building is three-stories high and built of brick. An easement allows for vehicular access over the CVS parking lot to a separate rear lot used for parking which is shared by the owners of 21-25 Cypress Street and where deeded spaces are provided. A wood stockade fence runs along both side property lines. This property is a transition between the commercial uses located at the Cypress and Washington Street intersection, and the single- and two-family residential uses located along Cypress Street.

Dr. Dorian Mintzer said that she wishes to legalize the part-time psychologist office she is operating out of 23A Cypress Street, which is part of her household at 23 Cypress Street; she rents the unit at 23B Cypress Street to a tenant. Although 23 and 23A Cypress Street have separate entrances, 23A is used as a study, guest and storage area for 23 Cypress as well as for her office. The entrance to 23A Cypress Street is at the ground level, and it is where clients enter the office.

Dr. Mintzer said that she proposes to see approximately 6 to 10 clients per week, from 8:30 a.m. to 7:00 p.m., although generally she only has appointments until 6:00 p.m. Five parking spaces are deeded to 23 Cypress in the rear lot shared by the owners of 21-25 Cypress Street. One of these spaces (marked #3 on the submitted plan) is available for her clients when needed. Dr. Mintzer submitted a dimensioned floor plan of her dwelling. The Chairman placed it in the record as Exhibit "1".

Dr. Mintzer said she needs relief from Sections 6.02, 4.07, Use #59 and 8.02.2 of the Town of Brookline Zoning By-Law.

Board Member Zuroff asked how long the petitioner had been using the home office. Dr. Mintzer replied 1 – 2 years.

Board Member Book asked whether one parking space would be adequate. Dr. Mintzer replied that it was.

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

Lara Curtis-Hayes delivered the findings of the Planning Staff.

Section 4.05.b.1 – Restrictions on Accessory Uses in Residence Districts: An accessory use in a dwelling unit in any residence district is subject to the office parking provisions of **Section 6.02**, unless modified by the Board of Appeals by special permit. In T-6 districts, an office on the ground floor requires one parking space for every 200 square feet. *The office area, including the entry area, hall and bathroom, is approximately 340 square feet. Therefore, the office would require two parking spaces, unless a special permit is issued by the Board of Appeals. The applicant is proposing to provide one parking space.*

Section 4.07 – Table of Use Regulations, Use #59: An office within a residence for a member of a recognized profession, other than a physician or member of the clergy, requires a special permit in T districts. *Special permit required.*

Section 8.02.2 – Alteration or Extension: A special permit is required to alter/extend this non-conforming building. *Special permit required.*

Ms. Curtis-Hayes said that the Planning Board was not opposed to the legalization of this psychologist office. The applicant only sees one client or couple at a time, and the designated parking space should be sufficient. Additionally, there are parking meters available in the commercial district immediately abutting the property should more parking be needed on rare occasions. The proposed office should not interfere with other dwelling units in the building or in the neighborhood. However, the interior space should be documented in some way, either with a measured plan or by Planning Staff. Therefore, the Planning Board recommended approval of the application, subject to the following conditions:

- 1. No more than one patient or couple shall be at the office at the same time.**
- 2. Office hours shall not commence before 8:00 a.m. nor extend beyond 7:00 p.m., nor be in operation more than 20 hours per week, Monday through Friday.**
- 3. This relief shall expire in five years from the date of this decision unless the Board of Appeals votes to extend the same.**
- 4. The square footage and layout of the office area shall be documented, either by the submittal of a final measured floor plan or by an onsite visit by the Assistant Director**

for Regulatory Planning, prior to the issuance of a building permit to establish the office.

5. Prior to 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 and indicating the location of the parking space to be used by clients; and 2) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chair then called upon the Building Commissioner to deliver the comments of the Building Department. Mr. Shepard reiterated for the benefit of the Board the requirements of Accessory Use #59. He said that since the petitioner submitted measured drawings of her unit that perhaps the Board could consider striking condition # 4 proposed conditions. Mr. Shepard said that the Building Department is supportive of the granting of the requested relief.

The Board, having heard all the testimony, deliberated on the merits of the application. The Chairman supported the striking of condition #4 since the Board had no jurisdiction over the interior of the dwelling and the other Board Members agreed. The Board Members also agreed that the site plan submitted as part of the record was adequate and eliminated the final site plan requirement from condition #5. The Chairman questioned the inclusion of proposed condition #1. The Board discussed the issue and agreed that the number of clients should not be limited as the issue is parking, not numbers of clients. They then agreed to strike condition #1 from the condition imposed by the Board.

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 Sections 6.02, 4.07 Use#59 and 8.02.2 of the Zoning By-law and made 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.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

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

1. Office hours shall not commence before 8:00 a.m. nor extend beyond 7:00 p.m., nor be in operation more than 20 hours per week, Monday through Friday.
2. This relief shall expire in five years from the date of this decision unless the Board of Appeals votes to extend the same.

Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK

2010 JUL 13 10:04 AM


Enid Starr, Chairman

Filing Date: July 13, 2010

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals