



# *Town of Brookline*

## *Massachusetts*

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

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Patrick J. Ward, Clerk

**TOWN OF BROOKLINE**  
**BOARD OF APPEALS**  
**CASE NO. 2010-0025**

Petitioner, James Apteker, applied to the Building Commissioner for permission to construct a two-car garage with a residential unit above thereby converting their home at 58 Monmouth Street into a two-family structure. The application was denied and an appeal was taken to this Board.

On 10, June 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 2, September 2010, at 7:45p.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 19, and 26, August 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: James Apteker**

**Owner: James Apteker**

**Location of Premises: 58 Monmouth Street**

**Date of Hearing: Thursday, September 02, 2010**

**Time of Hearing: 7:45 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. 5.01; Table of Dimensional Requirements, footnote #1, variance required.**
- 2. 5.05; Conversions, special permit required.**
- 3. 5.43; Exceptions to Yard and Setback Regulations, special permit required.**
- 4. 5.50; Front Yard Requirements, variance required.**
- 5. 5.60; Side Yard Requirements, variance required.**
- 6. 5.61; Projections into Side Yards, variance required.**
- 7. 5.70; Rear Yard Requirements, variance required.**
- 8. For the Design of All Off-Street Parking Facilities:**
  - 6.04.4.c; special permit required**
  - 6.04.12; special permit required.**
  - 6.04.14; variance required.**
- 9. 8.02.2; Alteration or Extension; special permit required**

of the Zoning By-Law to convert the existing single family home to a two family with a three-bay garage with living space above at 58 Monmouth Street.

Said premise located in a **T-5 (one and two-family)** residential 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 Mark Zuroff. Attorney Robert Allen of 300 Washington Street, Brookline MA presented the case on behalf of the petitioner, James Apteker who was not able to be present for the hearing due to preparation for the impending hurricane.

Attorney Allen described the property at 58 Monmouth Street as a detached single family home constructed in the Second Empire style in 1860 featuring a slate mansard roof. The home is located on relatively large lot and is one of only two detached single-family homes in the zoning district. The property is considered a through lot, and is accessed (by vehicular traffic) from the rear through an alley that is shared by properties on Beacon Street as well as from a separate drive on Monmouth Street. Both driveways are gated and lead to separate gravel parking areas. The majority of the surrounding properties are used as attached single and multi-family row houses and apartment buildings. Attorney Allen said Monmouth Street is located in the National Register Longwood Historic District.

Attorney Allen reported that his client proposes to construct a 968 s.f. two-car garage with a 968 square foot residential unit above on approximately the same location as the existing gravel parking area at the rear of the lot. The addition, which has been designed to look like a carriage house, will be attached to the main house by a common vestibule and will be located 24' from the rear lot line (which is being considered a front yard lot line for zoning purposes, and it runs along the center point of the alley) and 5' from the side lot line. The garage portion of the carriage house will have a faux garage door facing Monmouth Street, and garage doors on the rear façade facing the alleyway. The second floor unit will have an exterior stair to provide a

second means of egress and will be located very near the side lot line. There will be a small balcony on the front façade of the second floor unit facing Monmouth Street. There is also an existing gravel drive in the front yard which will remain to provide a total of four parking spaces on the lot.

Attorney Allen represented that all the relief required could be granted by special permit. He said that his client proposes significant counterbalancing amenities that are required for the Board to consider a waiver of dimensional requirements under **Section 5.43**. Since his clients are proposing to convert the structure from a one to a two-family structure, a special permit is requested from **Section 5.05**, Conversions. Attorney Allen reported that the Board could waive any dimensional requirements except lot size under this section of the Zoning By-Law. He said that his client is proposing to reduce the size of the rear curb to 20' to be in line with the requirements of the By-Law. **Section 6.04.2** allows the Board to waive by special permit dimensional requirements for new parking facilities to serve existing structures. Attorney Allen said special conditions are being proposed to ensure the requirements for approval of a special permit under **Section 9.05** are satisfied. Attorney Allen presented the Board with a detailed list of conditions his client would agree to as part of the construction management plan that included; Project Timeline; Relevant Contact Information; Hours of Construction; Delivery Times; Worker Parking; and Cleaning around the area.

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

Lois Swirnoff of 80 Monmouth Street had concerns about drainage in the rear access road. Dick Garver of 23 Monmouth Court was critical of the existing solid fence on the petitioner's property and asked that a condition be added requiring the petitioner to replace the fence with

one more appropriate and which allows a view of the house. Bob Schram of 47 Monmouth Street asked that the fence not exceed a height of six feet and that assurance be provided that the existing tall trees will be maintained. Dr. Clouse of 59 Monmouth Street was concerned about the potential that the property could be used for three units rather than two and requested a permanent barrier preventing access from the front of the garage to the rear. Tommy Vitolo, of 20 Chapel Street and a Town Meeting Member commented that he was not in favor of or opposed to the relief but that the landscaping offered as a counterbalancing amenity would not be visible due to the fence. Karen Lynn Jones of 53 Monmouth Street asked about the status of the property as a through lot. Brenda Levy of 55 Monmouth Street reiterated concerns about the height of the current fence on the front of the property which prevents the property from being viewed by neighbors passing by. She also raised concerns about the parking of construction vehicles on Monmouth Street, the mass and bulk of the structure and the balcony proposed for the garage. One neighbor spoke about the height of the fence and that it should not come all the way out to the sidewalk. One speaker, identified as an abutter supported the relief, however wanted additional pruning to the tree that hung over the property line.

Courtney Synowiec, Planner, delivered the findings of the Planning Department.

**Section 5.01 – Table of Dimensional Requirements**

**Footnote 1:** Entrances to garages or covered vehicular passageways facing the street shall be at least 20' from the lot line. As the lot line is in the center point of the alleyway, the proposed garage setback is counted from the edge of the alley closest to the garage, which is 10' away. Under *Section 5.43*, the Board of Appeals may waive this dimensional requirement if counterbalancing amenities are provided. The applicant is proposing to provide additional landscaping. *Special Permit Required.*

**Section 5.05 – Conversions**

**Section 5.50 – Front Yard Requirements**

**Section 5.60 – Side Yard Requirements**

**Section 5.61 – Projections into Side Yards**

**Section 5.70 – Rear Yard Requirements**

**Section 6.04.4.c – Design of Off-Street Parking Facilities:**

Entrance and exit drives may be a maximum of 20' wide in residential districts.

**Section 6.04.14 – Garage Doors Facing a Way**

Dimensional Requirements	Allowed	Existing	Proposed	Relief
Side Yard Setback (Building)	10'	32.7'	5'	Special Permit*
Side Yard Setback (Stairs)	10'	32.7'	Est. 1'	Special Permit*
Front Yard Setback (Rear)	15'	17'	10'	Special Permit*
Driveway Width (Rear)	20'	17'	22'	Complies †**
Garage Door Width (Rear)	24'	n/a	18'6"	Complies

\* Under Section 5.43, the Board of Appeals may waive by special permit dimensional requirements for yards and setbacks if counterbalancing amenities are provided. The applicant is proposing to provide additional landscaping and at least one mature tree as counterbalancing amenities.

\*\* Under Section 6.04.12, the Board of Appeals may allow by special permit the substitution of other dimensions for the parking requirements for new parking facilities to serve existing structures.

† The applicant intends to reduce the dimension of the driveway width at the street line to 20'. Revised drawings have yet to be submitted.

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter or extend a non-conforming condition.

Ms. Synowiec said that the Planning Board split (3-3) on whether or not to support this proposal to construct a garage with an accessory unit above. While they found that the addition is attractively designed, half the Board members noted that the applicant has ample room on the property to design a two-car garage and additional unit without requiring setback relief. At the Planning Board meeting, the applicant did not demonstrate that he had seriously considered or attempted to design a proposal that met the required setbacks, and therefore did not show that infringing on the setbacks is necessary. These Planning Board members felt that the plan could be adjusted by reducing the width of the addition by five feet to at least meet the side yard requirement. The other half of the Board members found that the setback relief was justified, since the side yard relief for the addition was adjacent to a parking lot for a large apartment building and the front yard relief was related to the rear alley, which under the Zoning By-Law is considered a street, and thus a front yard lot line. Noted too was that the applicant currently uses the alley for access to park his cars in the same spot where the garage is to be located. Therefore,

these members found that there would be no negative impacts to neighbors. They also felt that the design of the carriage house would not have the correct proportions to the main house if the width were to be reduced. Therefore, the motion to recommend approval of the plans by Kunz Architects, dated 9/2009, did not carry. However, should the Board of Appeals approve the plans, the Planning Board recommended conditions be attached, especially one for a construction management plan prohibiting the parking of construction vehicles on Monmouth Street.

1. Prior to the issuance of a building permit, the applicant shall submit revised final plans and unobscured elevations, indicating all materials details and dimensions, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit a construction management plan subject to the review and approval of the Building Commissioner, with a copy forwarded to the Director of Transportation and Engineering and the Assistant Director of Regulatory Planning. The plan shall include a provision that no construction vehicles be located or parked on Monmouth Street.
4. 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; 2) final plans and elevations; 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, to deliver the comments of the Building Department. Mr. Shepard expressed disappointment that the non-compliant fence that was erected without benefit of a permit was not corrected. He explained the fence height is measured from the natural grade and because the front yard at the subject property is as much as two feet higher than the sidewalk, it will appear higher although meeting

the requirements of the Zoning By-Law. Mr. Shepard suggested that the Board consider providing a condition requiring the submittal of a drainage plan for review by and approval of the Engineering Department in response to drainage concerns voiced by a neighbor. Due to space constraints near the proposed carriage house, Mr. Shepard reminded the petitioner that air conditioning condensers are considered accessory structures and as such cannot be located closer than six feet from the lot line. Addressing perceived concerns related to vehicular flow, Mr. Shepard explained that once constructed, there will be no way to travel from Monmouth to the alley in the rear since the addition fills this space. Addressing neighborhood concerns regarding a construction management plan, Mr. Shepard said he will insure the plan includes information about traffic and parking to include hours during which deliveries can be made to the site. He said that the petitioner maintains that all parking will be on the site and the management plan will reflect this also. Mr. Shepard opined that although the initial addition was delayed in its completion causing considerable inconvenience to the neighborhood, it was well executed and seamless in relation to the original structure. He said that he expected the same of the proposed carriage house and anticipated that it will contribute significantly to the fabric of the neighborhood. Mr. Shepard said that the Building Department supports the proposed project.

After some discussion between the Board members, Mr. Zuroff asked Attorney Allen if his client was willing to install a fence that would allow the general public a view of the house. After consultation Attorney Allen stated that his clients would be willing to install a fence that would allow visual access to the house on the portion of the front fence between its Monmouth Street driveway and the front walkway. The Board closed the public hearing to deliberate the merits of the case.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits and that the petitioner has satisfied the requirements necessary for relief under Sections 5.43, 5.05, 6.04.12, 8.02.2, and 9.05 of the Zoning By-Law and 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, the applicant shall obtain a building permit for the existing fence.**
- 2. Prior to the issuance of a building permit, the applicant shall submit revised final plans and unobscured elevations, indicating all materials details and dimensions, subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities, including without limitation, a new fence which allows the general public a view of the house on that portion of the front fence between its Monmouth Street driveway and the front walkway, all subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 4. Prior to the issuance of a building permit, the applicant shall submit a drainage plan prepared by a Registered Professional Engineer to the Director of Engineering for review and approval.**
- 5. Prior to the issuance of a building permit, the applicant shall submit a construction management plan subject to the review and approval of the Building Commissioner,**

with a copy forwarded to the Director of Transportation and Engineering and the Assistant Director of Regulatory Planning. The plan shall include the following provisions:

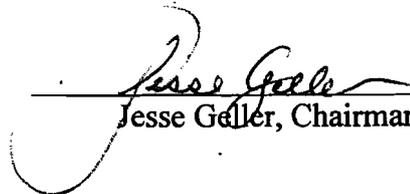
- a. **Project Timeline** – Upon the issuance of a building permit applicant agrees to commence construction and work expeditiously towards completion (estimated to be 4-5 months);
  - b. **Contact Number** – The petitioner will provide the name of the construction company along with the name and the telephone of the project manager;
  - c. **Hours of Construction** – consistent with Article 8.15 of Town of Brookline By-Law;
  - d. **Delivery Times** - Contractor will make every effort to schedule deliveries during normal working hours and all deliveries shall be made from the rear alley not on Monmouth Street;
  - e. **Worker Access and Parking** – The property has a parking area for construction workers use. No construction vehicles shall be parked on Monmouth Street or Monmouth Court;
  - f. **Cleaning** – Contractor shall monitor and clean sidewalks and roadways of any material deposited as a result of the construction.
6. 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; 2) final plans and elevations; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK

2011 APR 11 A 7 08

Unanimous Decision of  
The Board of Appeals

Filing Date: April 11, 2011

  
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Jesse Geller, Chairman

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals