



Enid Starr, Co-Chair
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Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 2010-0026

Petitioner, Serge Safar, applied to the Building Commissioner for permission to construct a new deck on the rear of his home at 356 Tappan Street. The application was denied and an appeal was taken to this Board.

On 20, May 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 7, October 2010, at 7:30p.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 16 and 23, September 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: **SAFAR, SERGE**
Owner: **SAFAR, SERGE**
Location of Premises: **356 TAPPAN ST**
Date of Hearing: **October 7, 2010**
Time of Hearing: **7:30 PM**
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. **5.50; Front Yard Requirements, variance required.**
3. **5.60; Side Yard Requirements, variance required.**
4. **5.62; Fences and Terraces in Side Yards, variance required.**
5. **5.70; Rear Yard Requirements, variance required.**
6. **5.74; Fences and Terraces in Rear Yards, variance required.**
7. **8.02.2; Alteration or Extension, special permit required.**

Of the Zoning By-Law to Construct a new deck requiring BOA relief **at 356 TAPPAN ST.**

Said premise located in a **M-1.5 (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.

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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. The Architect for the homeowner Mr. David Rose of RGO Partnership, 1340 Centre Street, Newton Center, MA presented the case before the Board.

Mr. Rose described the property at 356 Tappan Street as an attached single-family dwelling in a block of nine townhouses. The house was built in 1893 and is located approximately one block south of Beacon Street near Washington Square. The Flemish architectural style of these townhouses consists of a fieldstone and yellow brick façade and steep slate-clay roofs with gables and hipped dormers. This unit consists of a finished basement, first, second, third and attic floors. The surrounding neighborhood consists of row-type apartments, attached townhouses, and some larger residential structures, including Regency Park. The rear abutter is Star Market at 1717 Beacon Street. Area for parking is located behind the building and accessed by a long vehicle passageway serving multiple properties in the immediate area. He said that there is an existing 5'4" x 20' deck at the rear of dwelling.

Mr. Rose said that his client, Mr. Serge Safar is proposing to construct an expanded deck at the rear of the dwelling. The existing deck will be removed and a new larger deck will be built. The proposed deck will measure 19'10" x 19'4", and will be 383 sq/ft. The deck will extend over the existing parking spaces and will be located 11'2" from the rear lot line. The plan incorporates detailing to match the existing deck, such as iron guardrails and similar colored synthetic wood as the base. Mr. Safar is proposing to raise the front portion of the deck by 12" to provide greater privacy for the neighbors. One built-in planter will span the length of the north side of the deck and two smaller planters will be placed along the perimeter of the south and east sides of the deck, with plants to be grown no higher than the deck guardrail he said.

Addressing the concerns of a direct abutter, Mr. Thomas Shine, relative to the deck size and proximity to the property line, Mr. Rose said that his client is willing to lower the rear segment of the deck to provide additional privacy and maintain deck plants below the level of the guardrail to preserve Mr. Shine's views.

Mr. Rose said that his client's home is pre-existing, non-conforming in many respects including front, rear, and side setbacks. He said that the Board could grant relief under **Section 8.02.2** of the Zoning By-Law for these non-conformities. He said the new deck also requires side and rear relief and the Board could grant relief under **Section 5.43** of the Zoning By-Law provided counterbalancing amenities are undertaken. He said that his client is proposing to install planters and climbing vines to fulfill the requirements of this Section.

The Chairman then asked if anyone in attendance wished to speak in support or in opposition to the petitioner's proposal.

Mr. Bernard Gelber of 360 Tappan Street, a direct abutter, commented on the high quality of work done by the petitioners on their home to date. He expressed support for the proposal before the Board

Mr. Thomas Shine of 358 Tappan Street, also a direct abutter, said that overall he is satisfied with the proposal before the Board. He expressed several concerns however. He stated that the plan should reflect the correct relationship between the proposed deck and the property line. He said that he would prefer no planters on the deck and the existing concrete wall and parking area should be labeled for clarity. Mr. Shine expressed his support for the relief requested provided the property line dispute is addressed and there is an adequate water management system preventing drainage onto his property.

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

Section 5.43: Exception to Yard and Setback Regulations.

Section 5.50: Front Yard Requirements: This is a pre-existing non-conforming setback that is not being altered with this proposal.

Section 5.60: Side Yard Requirements.

Section 5.62: Fences and Terraces in Side Yards: Uncovered decks may not be constructed closer than six feet from the property line.

Section 5.70: Rear Yard Requirements.

Section 5.74: Fences and Terraces in Rear Yards: Uncovered decks may not extend into the yard more than fifty per cent of the required rear setback. The proposed deck will be 10'2" from the rear lot line.

Setback	Required	Existing	Proposed	Finding
Side Yard Setback	6 feet	0 feet (dwelling/existing deck)	0 feet (deck)	Special permit *
Rear Yard Setback	30 feet (for building) 15 feet (for deck)	25'9" feet (from the existing deck)	11 feet 2" (deck)	Special permit *

*Under Section 5.43, the Board of Appeals may substitute by special permit other dimensional requirements for yards and setbacks if counterbalancing amenities are provided. The applicant is proposing to install planters with climbing vines as a counterbalancing amenity.

Section 8.02.2: Alteration or Extension: A special permit is required to alter this pre-existing non-conforming structure.

Ms. Synoweic reported that the Planning Board was not opposed to the construction of an extended deck in the rear of the dwelling. The proposal adds more useable open-space for the occupants, while preserving an area underneath the deck for parking. The Planning Board was supportive of rear yard setback relief in this case as the deck extension will also alleviate falling snow and ice from the extremely steep roofline. Therefore, the Planning Board recommends approval of the proposal and the plans, prepared by R.G.O. Partnership, dated 3/12/2010 and submitted 9/3/10, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final elevations indicating all dimensions, vertical property lines, labeled concrete wall and parking area, materials and railing details 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. Deck plants shall be maintained so that they are no taller than the deck guardrails.

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 elevations of the deck 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, to deliver the comments of the Building Department. Mr. Shepard stated that the Planning Department had worked very hard to encourage cooperation between the neighbors to reach a plan that was acceptable to all. He said that this row of homes, in particular, are some of the more architecturally interesting structures in Town. He said that the design appeared attractive, and would provide additional protection for the inhabitants in severe weather. Mr. Shepard said that the Building Department was supportive of the relief requested and the project as well as the conditions proposed by the Planning Board. He said that should the Board grant the requested relief, he would insure compliance with the requirements of the State Building Code.

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 5.62, 5.74, 5.43, 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.

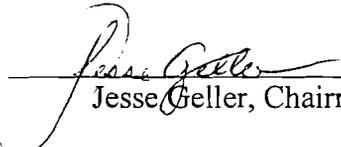
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final elevations indicating all dimensions, vertical property lines, landscaping (including all counterbalancing amenities), labeled concrete wall and parking area, materials and railing details subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Deck plants shall be maintained so that they are no taller than the deck guardrails.
3. 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 elevations of the deck 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

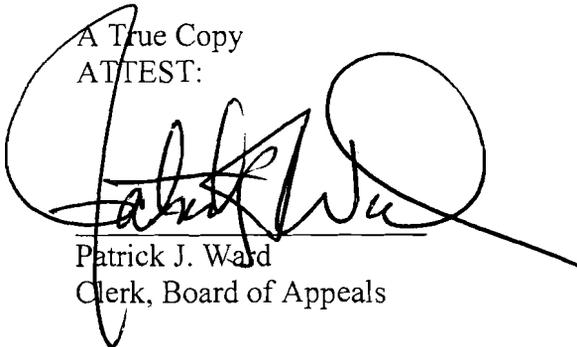
The Board of Appeals

Filing Date: August 1, 2011



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

 **COPY**

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TOWN CLERK

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