

BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
BROOKLINE

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TOWN OF BROOKLINE

*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

BOARD OF APPEALS
CASE NO. 2010-0030

Petitioners, Jagdish K. Dhingra and Meera Mahalingam applied to the Building Commissioner for permission to construct a conservatory and deck on the rear of their home at 104 Coolidge Street. The application was denied and an appeal was taken to this Board.

On 1, July 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 5, August 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 15 and 22, July 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: Roger Lipson
Owner: Jagdish K. Dhingra & Meera Mahalingam
Location of Premises: 104 Coolidge Street
Date of Hearing: August 5, 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. 5.60; Side Yard Requirements (main house) variance required.**
- 3. 5.70; Rear Yard Requirements, variance required.**
- 4. 8.02.2; Alteration or Extension, special permit required**

of the Zoning By-Law to construct a conservatory and deck to the rear of their home per plans at 104 Coolidge Street.

Said premise located in a **T-5 (two family)** 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.

**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 Christopher Hussey and Mark Zuroff. Attorney Roger Lipson of Goldenberg, Walters, Lipson, 7 Harvard Street Brookline, MA 02446, presented the case for his clients before the Board.

Attorney Lipson described the property at 104 Coolidge Street as a 2.5-story two-family home located north of the JFK Crossing commercial district. Built in 1895, this structure is distinguished by its hipped roof with gabled roof dormers, an off-centered flat-roofed front

porch, and its unique detailing on the front center dormer. The property includes a driveway along the south side of the house. There is an existing deck at the rear of the dwelling, approximately 8' x 22' in dimension. There is another 5' x 14' covered porch along the north side of the dwelling which provides access to the second unit. The surrounding neighborhood consists of mostly residential uses including single-family, row and two-family houses, as well as multi-family structures. Attorney Lipson presented two letters of support for the project, one from a neighbor at 107 Thorndike Street and another from the direct abutter at 110 Coolidge Street.

Attorney Lipson said that the owners, Jagdish K. Dhingra and Meera Mahalingam are proposing to construct a conservatory and new deck at the rear of their home. The proposed 16.5' x 16.5' conservatory would be built on the footprint of the existing deck and extend an additional 8.5' into the rear yard. Two sets of French doors from the kitchen will open up into the conservatory. Additionally, the existing canopy and trellis would be removed to accommodate the new addition. The conservatory's facades would be composed of an array of glass windows and doors with clapboard siding installed along the lower portions of the structure. The conservatory would include a slightly pitched gabled roof, with a height of 12'4" from the base of the deck. A single French door on the side would lead to a small porch and stairway, centered on the south side of the conservatory, providing access to the yard. The proposal calls for a 6.9' x 11.2' deck to be built along the north side of the conservatory, with a stairway extending towards the rear of the property for additional yard access. The deck would extend to nearly align with the wall of the north side of the dwelling. Detailing and railings would complement the existing features and architecture of the house. Framed lattice skirting would be installed as a base to the elevated deck and conservatory. The A/C condenser unit would be relocated from its existing

location behind the northwest corner of the house to behind the side porch, shifting it within 3-4 feet of the side property line.

Attorney Lipson said that his client’s needed rear setback relief which could be granted by the Board under §5.43 of the Zoning By-Law. As to the counterbalancing amenities required by this section of the By-Law, Attorney Lipson stated that the extensive plantings shown on the landscape plan provided the necessary amenities. Attorney Lipson reported that although the pre-existing, non-conforming structure does not conform to the side yard requirements, the addition is compliant.

The Chairman asked whether anyone wished to speak in favor or in opposition to the proposal before the Board. No one rose to speak.

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

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

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

Dimensional Requirements	Required/Allowed	Existing	Proposed	Notes
Rear Yard Setback	30 feet	33.8 feet	17.3 feet	Special Permit*
Side Yard Setback (Main House)	10 feet	6.9 feet	13.9 feet	Complies**
Side Yard Setback (Deck)	6 feet	10 feet (approximate)	7 feet	Complies†

*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 dwelling has a pre-existing non-conforming side setback that is not being altered with this proposal. The proposed addition meets side setback requirements.

†Under *Section 5.63*, uncovered decks may not extend more than six feet to the property line.

Ms. Synowiec reported that the Planning Board was not opposed to the proposed construction of a rear conservatory and deck. The addition is attractively designed to integrate well with the existing house and is not expected to have a detrimental impact on the neighborhood. However, there are concerns about the close proximity of the relocated AC condenser unit in relation to the side property line, which could be addressed through use of proper counterbalancing amenities and screenings. Therefore, the Planning Board recommends approval of the plans prepared by Malcolm MacKenzie, Registered Architect, dated 5/12/10, and the site plan prepared by Bruce Bradford, P.L.S., dated 4/25/10, subject to the following conditions:

1. Prior to the issuance of a building permit, final elevations, indicating all materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, a final landscaping plan indicating all counterbalancing amenities, shall be submitted for review and approval to the Assistant Director of Regulatory Planning.
3. Prior to the 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 building elevations stamped and signed by a registered 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, for the report from the Building Department. Mr. Shepard reported that the plans seemed well drawn and expected the conservatory to be an asset to the home in particular and the neighborhood in general. As to the location of the relocated condenser unit for the air conditioning, Mr. Shepard reported that he considers these units to be accessory structures and therefore limited to at least a six foot setback from the property line. He said the unit was being relocated to accommodate the new deck. Mr. Shepard opined that since extensive relief was being requested in the rear yard, an appropriate

amenity might be the relocation of this unit away from the property lines to be less of an acoustical burden to the neighbors. Mr. Shepard reported that he was supportive of the conditions recommended by the Planning Board and if approved would insure the addition is built in accordance with the conditions and the requirements of the state building code.

During deliberations the Board Members spent considerable time speaking about the condenser issue, at one point asking the petitioner if he would be willing to move the unit farther away from the property line. The petitioner responded that he would move the unit to a more suitable location recognizing the Board's concern regarding the issue.

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 Section 5.43 subject to completion of the counterbalancing amenities as herein below provided, Section 8.02 and Section 9.05 of the Zoning By-Law with respect to the relief requested, except relief necessary for installation of the air conditioner condenser within the side yard property line set back, 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:

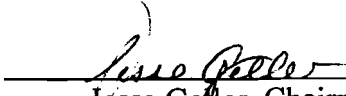
- 1. Prior to the issuance of a building permit, final elevations, indicating all materials,**

shall be submitted to the Assistant Director for Regulatory Planning for review and approval.

2. Prior to the issuance of a building permit, a final landscaping plan indicating all counterbalancing amenities, including, without limitation, relocation of the air conditioner condenser to a location not within any property line set back area, shall be submitted for review and approval to the Assistant Director of Regulatory Planning.
3. Prior to the 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 building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

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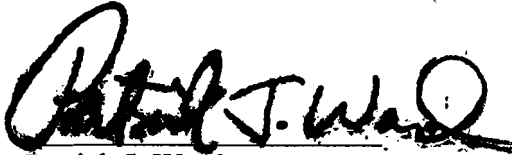
Unanimous Decision of
Board of Appeals



Jesse Geller, Chairman

Filing Date: August 23, 2010

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals