



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

RECEIVED
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 BROOKLINE
BOARD OF APPEALS
CASE NO. 2010-0032**

Petitioner, Linda Keaveney, applied to the Building Commissioner for permission to construct a deck and landing at the rear of her home at 18 Berkley Court. The application was denied and an appeal was taken to this Board.

On June 17, 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 August 12, 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 July 29 and August 5, 2010 in the Brookline Tab, a newspaper published in Brookline. A 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: **Linda J. Keaveney**
Owner: **Linda J. Keaveney**
Location of Premises: **18 Berkley Court**
Date of Hearing: **August 12, 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. **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
2. **5.70; Rear Yard Requirements, variance required.**
3. **5.71; Projections into Rear Yards, variance required.**
4. **8.02.2; Alteration or Extension, special permit required**

Of the Zoning By-Law to construct a deck and landing to the rear of the property, per plans at **18 BERKLEY COURT 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.

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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, Enid Starr and Board Members, Christopher Hussey and Jonathan Book.

The petitioner, Linda Keaveney, presented her case before the Board.

Ms. Keaveney described her home and neighborhood as a two-family house situated on an unusually shaped lot at the end of a private, dead-end road. Built in 1924, the decker style house is

characterized by a hipped roof with a single centered dormer. Located between Emerson Garden and Brookline Village, the street consists mostly of other similarly built, two-family homes. The front façade of the home includes an enclosed porch with a roof deck aligned to the east side of the building. There is also an existing 4’x4’ uncovered porch and stairs at the rear of the house.

Ms Keaveney said that she would like to construct a deck at the rear of the dwelling. The edges of the 12’ x 14.5’ x 6’ trapezoidal shaped deck will be parallel with the rear property lines of the lot, while maintaining a 5’ setback. A new door from the recently renovated kitchen will lead out to the deck, and a stairway at the rear side of the deck will provide access to the back yard. She said the deck would have pressure treated wood framing, composite decking, and have 3 foot tall PVC railings. Framed lattice skirting would be installed as a base to the elevated deck. The clothesline pole will be removed to accommodate the new deck and the existing rear porch will remain as is. Ms. Keaveney reported that the rear yard is small and very private and she would provide additional plantings as a counterbalancing amenity as required by §5.43 of the Zoning By-Law.

Chairman Starr asked whether anyone in attendance wished to speak in favor or against the petition. No one rose to speak.

Courtney Synowiec, Planner, delivered the comments of the Planning Staff.

Section 5.43: Exception to Yard and Setback Regulations:

Section 5.70: Rear Yard Requirements:

Section 5.71: Projections into Rear Yards: The deck does not meet the required setback.

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

	Required	Existing	Proposed	Finding
Rear Yard Setback	15 feet	6 feet (house)	5 feet	Special permit required*

Ms. Synowiec reported that the Planning Board was not opposed to the construction of a deck at the rear of the dwelling. The proposal would not adversely affect the privacy of direct abutters and cannot be seen from the street. An abutting woodworking shop extends directly up to the rear property line, providing screening, in addition to trees and shrubs. Furthermore, the unusual nature of the lot does not allow for many other alternatives in constructing a useable deck within the required setback. Therefore, the Planning Board recommended approval of the plans prepared by Michael Kim, Registered Architect, submitted to the Planning Department on July 20, 2010, subject to the following conditions:

1. 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.
2. 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 and deck elevations stamped and signed by a registered architect; and 2) evidence that 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 opined that the lot is somewhat irregular in shape, especially to the rear and the height of the first floor, about 4' off the ground makes use of the yard difficult. Mr. Shepard said that a deck would provide more usable space and given its somewhat hidden nature would not in his opinion negatively impact adjoining lot owners. Mr. Shepard stated that the Building Department is supportive of the proposal as well as the conditions recommended by the Planning Board.

The Board, having heard all the testimony, deliberated on the merits of the application. Board Member Book asked whether the petitioner had contacted her neighbors about the proposal. Ms.

Keaveney reported that she had and they were all supportive of the project. Mr. Book stated that he was in favor of granting the requested relief subject to the Planning Board's recommended conditions. Board Member Hussey agreed.

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 5.43, 5.70, 5.71, 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.

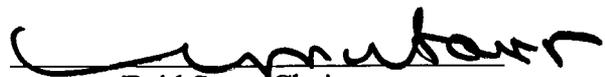
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. **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.**
2. **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 and deck elevations stamped and signed by a registered architect; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

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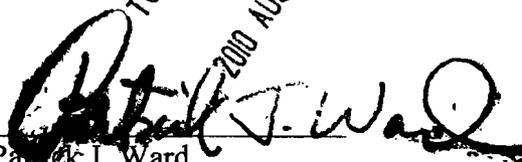
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Filing Date: August 24, 2010


Enid Starr, Chairman

A True Copy
ATTEST:

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Patrick J. Ward
Clerk, Board of Appeals