



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. 2010-0060**

Petitioners, Bettina Siewert and Doug Teich, applied to the Building Commissioner for permission to construct a deck in their rear yard at 53 Waverly Street. The application was denied and an appeal was taken to this Board.

On September 23, 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 November 9, 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 October 19 and 26, 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: Bettina Siewert and Doug Teich
Owner: Bettina Siewert and Doug Teich
Location of Premises: 53 Waverly Street
Date of Hearing: November 09, 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. 5.74; Fences and Terraces in Rear Yards, variance required.**
 - 3. 8.02.2; Alteration or Extension, special permit required.**
- Modification, as required, of Board of Appeals Decision #2944 dated 2-27-1989.**

Of the Zoning By-Law to construct a deck on the rear of your dwelling at 53 WAVERLY STREET BRKL.

Said premise located in a T-5 (two-family and attached single-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/MasterTownCalandar/?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, Jonathan Book and Mark Zuroff. Bettina Siewert, a co-owner, presented the case before the Board.

Ms. Siewert described her home as a two-and-a-half story two-family decker. Clad in clapboard it features a prominent front porch and three gabled dormers on the front façade. The rear yard is well screened by mature evergreens and other vegetation. The surrounding properties are predominately single and two-family residential structures.

Ms. Siewert said that they are proposing to construct a 15.7' x 14' deck in their rear yard. The deck will be constructed of Ipe, a naturally decay resistant wood, and will have benches around the sides in lieu of railings. The deck will sit 2' off the ground, and the benches will rise an additional 1'6" from the deck. The deck will be attached to the house and will be accessed from the breakfast room in the rear of the house. The deck can also be accessed from the yard via granite stairs and a bluestone path. She said they will be utilizing an existing patio constructed of pavers to the side of the deck for an outdoor grill. Ms. Siewert said they are proposing to maintain the existing landscaping in the rear yard as well as providing new landscaping as a counterbalancing amenity. She said that the new landscaping would be provided near the deck.

The Chairman asked whether the petitioner had spoken with any of her neighbors and she reported that they had. She said the neighbors were invited into the rear yard and none voiced opposition to the proposal.

The Chairman asked whether anyone wished to speak either in support or in opposition to the proposal. No one rose to speak.

Lara Curtis Hayes, Senior Planner, delivered the findings of the Planning Board.

Section 5.74 – Fences and Terraces in Rear Yard

Uncovered decks not over 3' high above the level of the floor of the ground story may extend up to 50% into the required rear yard setback. The rear yard setback in a T-5 district is 30'.

Dimensional Requirements	Required/Allowed	Existing	Proposed	Referred
Rear Yard Setback (Terraces)	15'	25.3'	11.3'	Special Permit*

* Under Section 5.43, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicant is proposing to install additional landscaping as a counterbalancing amenity.

Section 8.02 – Alteration or Extension

A special permit is required to alter or enlarge a pre-existing non-conforming structure.

Ms. Curtis Hayes said the Planning Board was supportive of this proposal to construct a deck in the rear yard. The rear yard is completely screened from the view of neighboring properties year round due to the existing evergreen screen; however additional landscaping near the deck, perhaps in the form of planters on the deck or near the stone path, would add additional beauty to the property and the proposal. In addition to providing landscaping as a counterbalancing amenity, the Planning Board also noted that the substantial renovation the applicants are performing at this property is also an amenity as it will extend the life of this structure for many years. Therefore, the Planning Board recommended approval of the plans by Ruhl Walker Architects, dated 7/12/10, and the site plan by Snelling & Hamel Assoc., dated 6/17/10, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans for the deck indicating all materials and a final site plan 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 landscape 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 to the Building Commissioner for review and approval for conformance to the Board of Appeals decision:
 - 1) a final site plan and plans for the deck 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 said that the rear yard is extremely private and he doubted whether anyone could see into or out of the yard. Mr. Shepard described the proposed material for the decking, Ipe, as a renewable resource, extremely hard, and resistant to decay. He said that the

Building Department is supportive of the relief requested as well as the recommended conditions of the Planning Board.

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, 5.74, 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:

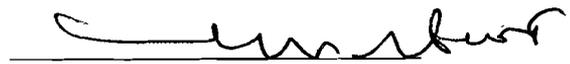
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 plans for the deck indicating all materials and a final site plan; a final landscape plan indicating all counterbalancing amenities, all 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 to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan and plans for the deck stamped and signed by a registered architect; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

RECEIVED
 TOWN OF BROOKLINE
 TOWN CLERK
 2010 NOV 19 9:30 AM

Unanimous Decision of the
 Board of Appeals



Enid Starr, Chairman

Filing Date: November 19, 2010

A True Copy
ATTEST:

A handwritten signature in black ink that reads "Patrick J. Ward". The signature is written in a cursive style with a large, prominent "P" and "W".

Patrick J. Ward
Clerk, Board of Appeals