



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

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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. 090007

Petitioners, Stephen and Roni Brissette, applied to the Building Commissioner for permission to legalize an existing business in their home at 57 Waverly Street as a customary home occupation. The application was denied and an appeal was taken to this Board.

On March 12, 2009, 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 April 2, 2009, at 7:00 p.m. in the Selectmen's Hearing Room, sixth floor, Town Hall 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 March 12 and 19, 2009 in the Brookline Tab, a newspaper published in Brookline. 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: BRISSETTE, STEPHEN F and BRISSETTE, RONI E

Location of Premises: **57 WAVERLY ST BRKL**
Date of Hearing: **04/02/09**
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. **2.08.4. b.3; Home Occupation, more than four pupils simultaneously not permitted, Variance Required.**
2. **4.05.1. a; Restrictions on Accessory Uses in Residence Districts, no employees permitted, Variance Required.**
3. **4.07; Table of Use Regulations, Accessory Use #60, Customary Home Occupation for gain, Special Permit Required.**
4. **6.02.1, Table of Off-Street Parking Space Requirements, Variance Required.**
5. **8.02.2; Alteration or Extension; Special Permit Required of the Zoning By-Law to legalize an existing business, specifically, a studio for exercising and mediation instruction for individual and group sessions as a "Customary Home Occupation" per plans at 57 WAVERLY ST 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/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, Jesse Geller, and Jonathan Book.

Attorney Diane R. Gordon, 10 Winthrop Square, Boston, MA 02110-1264 presented the case before the Board.

Petitioners Roni Brissette and Stephen B. Brissette were also present.

Mrs. Gordon described the site as follows:

57 Waverly Street is a two-story Mansard style single-family house that was built in 1875. In 1998, 881 square feet of the basement was finished for use as a part-time yoga studio and playroom with a valid building permit. There are two egresses from the basement: one via the interior stairs from the house and the other via a head house that opens to the rear yard. The site is within walking distance of both Brookline Village and Brookline Hills T-stops as well as the 60, 65, and 66 bus routes.

Mrs. Gordon advised the Board that the Brissettes' intention was to use the finished space for occasional yoga classes and Ms. Brissette believes she so informed Town agents. Whether she did or not, and whether or not the use "slipped through the cracks", she was unaware that zoning relief was required for a home occupation as defined in the Zoning By-Law Section 2.08(4)(b)(3) until a neighbor requested that she be cited by the Building Department. Ms. Brissette never intended to skirt the law and in fact, built an enviable reputation as evidenced by the many students that appeared on her behalf at the Planning Board hearing and by letters of support from neighbors and yoga students.

Typically, Ms. Brissette teaches 1-2 classes five days per week with a range of 1-8 students in each class. She has no employees. She is requesting a special permit to legalize the yoga classes with a maximum of four (4) students per class as mandated by Section 4.08, Table of the Use Regulations, Use #60.

FINDINGS

Section 2.08.4.b.3 – Definitions, Home Occupation.

Section 4.07 – Table of Use Regulations, Use #60.

"Home occupations" include but are not limited to:

Teaching of not more than four pupils simultaneously or, in the case of musical instruction, of not more than a single pupil at a time.

Section 8.02.2 Alteration or Extension.

According to Attorney Gordon, the following zoning relief is required:

- (i) A Special Permit to legalize a Home Occupation (Section 4.07 #60), to wit, a yoga studio with 4 or less students per class.
- (ii) A Special Permit under Section 8.02.2 for alteration or extensions of a non-conforming use or structure.

The Chair asked if there were anyone other than the petitioner that wished to speak in

favor of this petition.

Leila Edwards of 46 Waverly Street is a yoga student and neighbor of the Brissettes. She advised the Board that from her observations, the parked cars on Waverly Street are not from the yoga students but rather from commuters and high school students who leave their cars on Waverly Street all day. She noted that the absence of parked cars on the weekends confirms her observations. Ms. Edwards noted that Ms. Brissette's studio is not commercial like others in the Village and Ms. Brissette cares about her students.

Julie Bell, who with her family, shares a driveway with the Brissettes noted that a lot of police and meter attendants along with employees from Washington Street restaurants park on Waverly Street. Ms. Bell is fully in support of Ms. Brissette's home yoga studio.

Dale Flecker of 60 Waverly Street, who had initially written a letter in opposition to this home occupation, advised the Board that with the limit of four (4) students per class, he was now in support of the petition.

At the Planning Board hearing, the following, all students of Ms. Brissette, and all walkers to the studio appeared in support:

Molly Paul, 128 Davis Avenue #1;
Emily Novick, 57 Harris Street;
Christine Kane, 139 Davis Avenue;
Leila Edwards, 46 Waverly Street;
Rhonda Goodale, 42 Alton Place

Letters in support of the petition were received by this Board from Susan Mulski, 81 Griggs Road, Elaine Shanner, 230 Walnut Street, Julie Engel Mangt, 336 Washington Street, Alice Tauber, Oonagh Paulsson (who take the green line to class), Diane Brody, 137 Waverly Street.

No one appeared in opposition to this petition.

The Board then heard from Planner Courtney Synoweic of the Planning Department who provided the Planning Board comments, in part, as follows:

The Planning Board was split, one to one (with one member abstaining), in supporting a special permit for a Home Occupation use, which would allow yoga instruction for up to four individuals at any one time. The Board member in favor felt that providing yoga classes was a benefit to the residents of Brookline and would have minimal impact on the surrounding residential neighborhood, especially considering that the applicant has asked her students to walk or take the T when possible, and there is legal on-street parking in the area.

The Board member who was opposed felt this is an established business of 11 years, which has, due to its success, outgrown its ability to qualify as a home occupancy use. The

Board member felt that this business should not be located in a residential neighborhood and that it would be more appropriate for the applicant to rent studio space in a commercially zoned area.

The Board then heard from Building Commissioner Michael Shepard on behalf of the Building Department who advised that a home occupation such as that being proposed is provided for in the Zoning By-Law, he noted that Ms. Brissette has been “cooperative and transparent throughout this process” and the Building Department is “enthusiastically in favor” of Ms. Brissette’s petition.

The Chair, Ms. Starr, noted that with so many students walking to the site, the impact of this home occupancy use is of de minimus affect on the neighborhood. Ms. Starr also requested that Ms. Brissette use her best efforts to encourage students to walk to class.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant the two (2) special permits required and makes the following findings pursuant to Sections 4.07 and 8.02. and 9.05 of the Zoning By-Law.

1. The specific site is an appropriate location for such a use.
2. The use as developed will not adversely affect the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the operation of the proposed use.
5. The development as proposed will not have any adverse effect on the supply of housing available for low and moderate income people.

Accordingly, the Board grants Special Permits pursuant to Section 4.07 Table of Use Regulations, Use #60 and 8.02.2 Alteration or Extension subject to the following conditions:

1. No more than four (4) students shall be on the premises at any one time.
2. The Applicant shall record this decision with the Norfolk Registry of Deeds and provide the Building Commissioner with evidence of same.

Accordingly, the Board voted to grant the requested relief.

Unanimous Decision of
The Board of Appeals



Enid Starr, Chairman

Date of Filing: April 10, 2009

A True Copy.

ATTEST:



Patrick J. Ward, Clerk
Board of Appeals