



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

# *Town of Brookline*

## *Massachusetts*

Town Hall, 1<sup>st</sup> 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. 090026

Petitioner, Nancy J. Cunning, applied to the Building Commissioner for permission to operate a family day care in her home at 47 Alton Place. The application was denied and an appeal was taken to this Board.

On May 21, 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 July 2, 2009, at 7:30 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 June 11 and 18, 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:

Petitioners: **NANCY J. CUNNING**  
Location of Premises: **47 ALTON PLACE BRKL**  
Date of Hearing: **07/02/2009**

Time of Hearing: 7:30 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:

**Section 4.07, Use 15b; Special permit required** of the Zoning By-Law to operate a family daycare in home at 47 ALTON PLACE BRKL.

Said Premise located in a **M-1.0** (apartment house) 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 Jonathan Book and Jesse Geller. Ms. Cunning presented her case before the Board.

**Background Information** At the Fall 2008 Town Meeting, warrant article 14 was passed and subsequently approved by the Attorney General. Article 14 amended the Table of Use Regulations to include a new use, #15b, to allow large family day care homes for up to 10 children under the age of seven, or under the age of sixteen if there are children with special needs on site. Massachusetts General Law requires at least one approved assistant in large family home day cares. Use #15b allows large family home day cares by right in L, G, O, and I zones; by special permit in SC, T, F, and M zones; and would prohibit them in S zones. The state is currently reviewing their daycare regulations and it is anticipated there will be some changes to the laws; therefore the current amendment has a June 1, 2010 sunset date. It is expected a revised version of the amendment, consistent with the new state laws, will be passed at Town Meeting prior to the sunset date. Any special permits granted to large family home daycares prior to the sunset date will remain valid after the revised amendment is adopted.

Ms. Cunning described her home and neighborhood as a three unit condo building near St. Paul Street that was built in 1925. She resides and operates her daycare in the first floor unit which is 1,945 square feet. Approximately 1,000 square feet of the unit is dedicated for use as her daycare. The building is the last building in a row of similar buildings, and is next to an alley that allows for access to the parking in the rear for the buildings in this row and the buildings on Alton Court.

Ms. Cunning said she is proposing to legalize the pre-school immersion program she operates for up to ten Japanese children. She said that she has been operating this program out of her home for 26 years and primarily serves the medical and diplomatic community from Japan that settles in Brookline. Her pre-school follows the Brookline School calendar and observes the same vacations. It is open from 8:45a.m. to 2:45 p.m. The school has ten children who range in age from 3 to 5 years old. She said that she employs one assistant, who lives on Brook Street and walks to work daily. There is a fifteen minute window for drop-off and pick-up, which is held at the Billy Ward Park when weather permits. When weather does not permit, students use a side door entrance to the unit, and drop off occurs after most of the residents have left for work.

The Chairman asked whether anyone in the audience wished to speak in support or in opposition to the proposal and Nelly Langlais of 125 Kent Street stated that she was also a licensed day care provider and has known the petitioner for many years. She said that Ms. Cunning provides a needed service to the community and operates a clean, well managed family day care home. Several citizens submitted letters of support for Ms. Cunning's program, among them were Zita Samuels of 47 Alton Place, Apt #2, Ronda Goodale, of 42 Alton Place, Jan and Stuart Rose of 47 Alton Place, Apt #3, David Rasmussen of 22 Alton Court, and Judith Bednarz and Stephen Wallace of 19 Alton Place, Apt #2.

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

**Section 4.07 – Table of Use Regulations, Use # 15B**

A special permit may be granted by the Board of Appeals to allow Large Family Daycare Homes as an accessory use for up to ten children.

Ms. Synowiec reported that the Planning Board is supportive of this proposal to legalize the pre-school at 47 Alton Place for up to ten children. The Planning Department has received a number of letters in support of this daycare from abutters, who feel the pre-school is an asset to the community and has not detrimentally impacted them. Drop-offs and pick-ups are limited to a 15 minute period and are mainly held at the Billy Ward Park, where the children also play during the day. With an off-site drop-off and pick-up spot and an off-site play area, the pre-school has not, to our knowledge, caused any negative impact to the surrounding neighborhood. Therefore she said, the Planning Board recommended approval of the special permit for the Large Family Daycare home for up to ten children as an accessory use subject to the following condition:

1. A parking diagram shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. He said that the petitioner has been extremely cooperative throughout the process. He said that there have been no complaints about the operation and stated that the Building Department enthusiastically supports the requested zoning relief. He suggested an additional condition relative the recording of the decision should the requested relief be granted by the Board.

The Chair asked whether any members of the Board had any questions. Both members indicated that they would vote favorably on the proposal.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant a Special Permit in accordance with **Section 4.07 Use 15b**, operation of a large Family Daycare Home as an accessory use for up to ten children and makes 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:

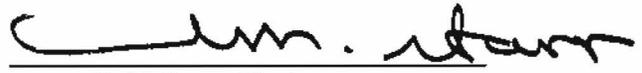
1. A parking diagram with written narrative describing pick-up and drop-off procedures shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. The petitioner shall submit to the Building Commissioner, proof of recording of the decision at the Norfolk County Registry of Deeds within forty five (45) days of this decision.

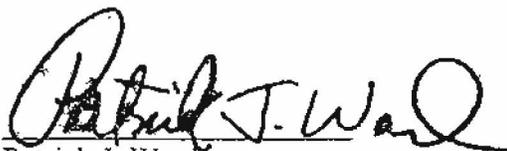
RECEIVED  
 TOWN OF NORFOLK, VA  
 JUL 15 2009

Unanimous Decision of  
 The Board of Appeals

Filing Date: July 15, 2009

A True Copy  
 ATTEST:

  
 Enid Starr, Chairman

  
 Patrick J. Ward  
 Clerk, Board of Appeals