



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

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BUILDING DEPT.
TOWN OF BROOKLINE
Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 090027

Petitioners, Stephen and Heidi Koretz, applied to the Building Commissioner for permission to operate a family day care in their home at 50 Stearns Road. 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 7:45 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: KORETZ, STEPHEN AND HEIDI G

Location of Premises: 50 STEARNS RD BRKL
Date of Hearing: 07/02/2009
Time of Hearing: 7:45 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 50 STEARNS ROAD BRKL.

Said Premise located in a M-1.5 (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.

Mr. Koretz presented his case before the Board.

Background Information In September 1970, BOA #1662 – The Board of Appeals granted a special permit to allow for a day nursery school at 50 Stearns Road for up to thirty children, aged 3-6. The special permit had a five-year sunset date with the option to renew the permit.

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.

Mr. Koretz described his home and neighborhood as a 2.5 story, two-family colonial that was built in 1920. Mr. Koretz said that he owns both units in the building, and operates the daycare in the first floor unit where he lives, and rents the second unit to a tenant. There is a fenced front yard on site that houses play equipment, and a driveway with an extensive parking area in the rear of the lot. Stearns Road is a one way street from St. Paul Street to Harvard Street.

Mr. Koretz said that he has been operating a daycare in this residence for 26 years. The daycare is open Monday-Thursday from 8:00-6:00. He cares for six children, ages 1-3.5 years old. He said that he has two assistants: one works on Monday and Tuesday and the other works on Wednesdays and Thursdays. Most of the children arrive by car, and people usually park in the driveway for drop-off and pick up. There is a large play area in the front yard for the children to use that is fenced in and is well screened from the street.

The Chairman asked whether anyone in the audience wished to speak in support of the proposal. Nancy Cuning of 47 Alton Place stated that she was also a licensed day care provider and has known the petitioner for many years. She said that Mr. Koretz provides a needed service to the community and operates a clean well managed family day care. Adele Epstein of 41 Stearns Road said that she has lived in the neighborhood for many years and has never observed a problem with parking or dropping off of children. She said that the children were quiet and she had no problem at all. Oscar Epstein also of 41 Stearns Road said that he has never observed any problem related to the day care and that he in fact enjoys the activity related to the children. Kathryn Chierchia of 3 Lawrence Rd., about a block from the subject

property, reported that some of her children attended the daycare and she had only a positive experience.

The Chairman asked whether anyone in attendance wished to speak in opposition to the proposal. Nancy S. Grodberg of 100 St. Paul Street said that she was not sure whether she was opposed as all she needed was additional information. She expressed concern that she was not given adequate notice for the Planning Board hearing and could not attend because of a previous commitment. She asked if the children play in the rear yard and Mr. Koretz responded that the children play in an enclosed area toward the front of his home. He added that sometimes his children ride bikes in the driveway but only under close supervision. Ms. Grodberg again expressed concern over lack of information and the Chairman then explained the notice requirements provided by law.

Courtney Synoweic, Planner, provided 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. Synoweic said that the Planning Board was in favor of this proposal to grant a special permit for a large family home daycare at this residence. It has been operating for 26 years without complaint. In addition, a previous resident had obtained a special permit to operate a nursery school for up to 30 children. The site has ample parking, a fully fenced play area and ample interior space for the operation of a daycare. It appears this site is well suited for a large family home daycare. Therefore, the Planning Board recommended approval of a special permit for a large daycare home for up to 10 children, 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 to 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.

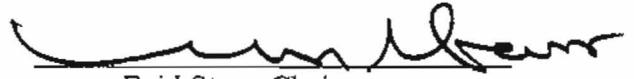
Unanimous Decision of
The Board of Appeals

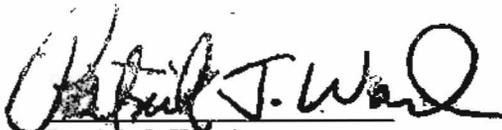
RECORDED
TOWN CLERK
2009 JUL 13 A 8 30

Filing Date: July 13, 2009

A True Copy

ATTEST:


Enid Starr, Chairman


Patrick J. Ward
Clerk, Board of Appeals