



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

Town of Brookline

Massachusetts

2009 JUL 27 P 1:52
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. 090030

Petitioners, Laurie and Jeffrey Lasky, applied to the Building Commissioner for permission to operate a family day care in their home at 18 Greenough Circle. 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 16, 2009, at 7:00 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 25 and July 2, 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: **LASKY, JEFFREY S and LASKY, LAURIE B**
Location of Premises: **18 GREENOUGH CIRCLE BRKL**
Date of Hearing: **07/16/2009**
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:

Section 4.07, Use 15b; Special permit required of the Zoning By-Law to operate a family daycare in home at **18 GREENOUGH CIRCLE BRKL.**

Said Premise located in a T-6 (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, Mark Zuroff and board members Christina Wolfe and Rob DeVries. Ms. Lasky 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. Lasky described her property at 18 Greenough Circle as a two-story Colonial single-family home with an attached garage. Her home is situated at the end of a private cul-de-sac, and has a large, well-screened and fenced play area to the rear of the house. Ms. Lasky provided photographs for the Board.

There are seven other single-family homes on the Greenough Circle, which is off Washington Street between Greenough Street and Cypress Street. There is very little traffic on Greenough Circle, and she said that the road is wide enough to accommodate temporary street parking on both sides if necessary.

Ms. Lasky said that she is proposing to continue to operate her "Little Feet Daycare" business as she has been for the last 19 years. She said she was requesting relief under Section 4.07, Use 15 of the Zoning By-Law. The daycare operates from 8:30 a.m.-5:30 p.m. Tuesday through Friday. Beginning September 2009, the daycare will be open Monday through Thursday. There is a one hour drop-off time from 8:30 a.m.-9:30 a.m. so the arrival of the children is slightly staggered. Occasionally, a child will be enrolled for only the duration of the morning and will be picked up at 12:45 p.m. There is one child who is currently enrolled for only mornings. There is one child who attends the program only two mornings a week. Pick-up time for the rest of the children runs from 4:00 p.m.-5:30 p.m. She said that she serves approximately 13 families a year, with approximately 7-10 children attending the program daily. The children are 1-3 years old, with usually no more than three 12 month old children at any given time. She said that of the children who attend her Daycare live in the neighborhood and arrive by stroller or bicycle. This fluctuates seasonally, but there are several families who walk or use their bikes year round, and several others who drive. Staffing varies from year to year and requires a fair amount of flexibility. There have been as many as four part-time assistants, but there are usually three. Ms Lasky said that she currently employs one full-time non-resident teacher, who does not own a car or drive to work, her son, and an additional non-resident part-time employee, who does have a car. Ms. Lasky reported on the need for Large Family Day Care facilities. She described her operation as a home away from home for her clients.

The Chairman asked the Board Members whether they had any questions at this point. Christina Wolfe asked about the large fenced playground on the property. Ms Lasky replied that the fenced area provides security for the children as well as a buffer for her neighbors. Board Member DeVries asked Ms. Lasky to

elaborate about the licensing requirements for operations such as hers. Ms. Lasky reviewed both the current regulations and those that are expected to be forthcoming shortly from the state. Christina Wolfe asked about ownership of Greenough Circle and whether it was private. Ms. Lasky responded that it was private and pointed out on the site plan that they in fact owned a portion of the circle. She said that her neighbor at # 17 allowed her to use their space for pick-up and drop off should the need arise. Rob Devries asked of the Building Commissioner whether Greenough Circle was a private way and Mr. Shepard responded that it was.

Chairman Zuroff asked whether anyone present wished to speak in support of the application. Brian Kane, TMM precinct #6 and also member of the Transportation Board stated that he was in favor of the large family day care facilities in general and urged the Board to grant the requested relief. Madad Cohen who lives across the circle at 15 Greenough Circle said that he supports the comments of Mr. Kane and opined that neighborhood family day care facilities contribute to the neighborhood fabric of the community. As to parking, he said that he submitted a letter of support and parking for the day care is not an issue. Rob DeVries asked about the accessibility to the day care for emergency vehicles during pick-up and drop-off. Mr. Cohen represented that the circle is broad enough to accommodate emergency vehicles during all times of the day. Mr. Lasky, husband of the applicant, explained the snow removal process. He said that with the help of his two sons he clears the area with a snow blower to assure the width of the roadway is maintained as well as the sidewalk so access is assured regardless of the weather.

Chairman Zuroff asked whether anyone was present that would like to speak in opposition to the proposal. No-one rose to speak.

Michael Shepard, Building Commissioner, delivered the findings of the Planning Department staff.

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.

Mr. Shepard reported that the Planning Board was supportive of granting this special permit. Most, if not all, of the applicant's abutters have been in contact with the Planning Department either via telephone or email, in support of the granting of this special permit. Many of the letters state the applicant is an excellent neighbor, is courteous in managing the parking situation for her daycare, and state they find the Little Feet daycare to be a pleasure to live near. The daycare has been operating for 19 years without complaint, and it is reasonable for the daycare to continue to operate. Therefore, 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.**

Mr. Shepard then 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. Member DeVries asked whether the special permit, if granted, goes with the property or the applicant. Mr. Shepard said that the relief would run with the land but if the applicant or some subsequent owner abandoned the accessory use in question the relief granted by this Board would no longer be in effect. The Chairman stated that he had no objection to the granting of the requested relief in this case and his fellow Board Members agreed.

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:

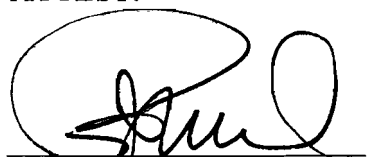
- 1. **A parking diagram with written narrative describing pick-up and drop-off procedures shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2. **The petitioner shall submit to the Building Commissioner, proof of recording of the decision at the Norfolk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

Unanimous Decision of
The Board of Appeals

Filing Date: 7/27/09


Mark Zuroff, Chairman

A True Copy
ATTEST:


Patrick Ward
Clerk, Board of Appeals