

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

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 090031

Petitioner, Meena Bhambi, applied to the Building Commissioner for permission to operate a family day care in her home at 97 Aspinwall Avenue. 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 7:15 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: MEENA BHAMBI

Location of Premises: 97 ASPINWALL AVE BRKL

Date of Hearing: 07/16/2009

Time of Hearing: 7:15 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 97 ASPINWALL AVE BRKL.

Said Premise located in a T-5 (two family and attached single family) 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. Bhambi 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. Bhambi described 97 Aspinwall as a two-family home on a lot that abuts the Billy Ward Playground. There is a driveway and a parking area behind the house with four spaces that is used for

drop-off and employee parking. The basement of the building is used exclusively for the daycare, with two residential units above it. The rest of the neighborhood is primarily two-family homes, with apartment buildings to the rear.

Ms. Bhambi said that she has been operating the "Loving and Caring Family Daycare" at this location for 26 years. The daycare is open Monday-Friday from 8:00 a.m. to 6:00 p.m. year round. The daycare serves 6-10 children ranging in age from 3 months to five years old, and there are no special needs children on site. She employs two certified teachers to work at the daycare. While the majority of parents walk their children to the daycare, there is one child who arrives by car and is picked up and dropped off in the parking area behind the house. Parents tend to congregate in the adjacent park for pick-up in the afternoon.

Chairman Zuroff asked the Building Commissioner whether the petitioners in the Day-Care relief cases actually had to own the property. Mr. Shepard responded that no, in fact several of the petitioners in these cases rent the unit in which they are living. He stated further that in all relevant cases, the signature of the owner is required and appears on the special permit/variance applications. Mr. Shepard noted that the relief, if granted, will run with the land as opposed to with the petitioner.

The Chairman asked whether anyone in the audience requested to speak in favor-of or against the proposal. No-one rose to speak.

The Building Commissioner, Michael Shepard delivered the findings of the Planning Department staff. He said that 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 also reported that the Planning Board was supportive of this proposal to legalize the large family daycare home at 97 Aspinwall Avenue. The Planning Department had received several letters of support from parents whose children either attend or have attended the Loving and Caring Family Daycare, and stated they felt the daycare is an asset to the neighborhood. This daycare has operated for 26 years without complaint, has adequate parking to support

a staggered pick-up and drop-off for children, and has excellent access to recreation. It is not believed this daycare has a detrimental impact on the neighborhood. 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. Christina Wolfe inquired as to whether Ms. Bhambi owns the home and she responded that she does own the property and that the Day Care operation was conducted in the basement and she has a tenant on the first floor and she occupies the second floor. Board Member, Rob DeVries inquired about the parking plan that was submitted to the Planning Department. Mr. Shepard stated that the Planning Department may have had a hand in its preparation and he suspects the Planning staff will insure all pertinent aspects of the plan are included on the required document. 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:

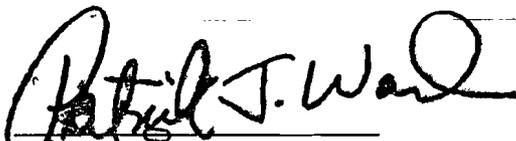
1. A parking diagram with written narrative describing pick-up and drop-off procedures shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. The petitioner shall submit to the Building Commissioner, proof of recording of the decision at the Norfolk County Registry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

Unanimous Decision of
The Board of Appeals

Filing Date: August 17, 2009


Mark Zuroff, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

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