



**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. 090032

Petitioner, Alecia Peyrano, applied to the Building Commissioner for permission to operate a family day care in her home at 152 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 7:30 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 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: ALICIA PEYRANO**  
**Location of Premises: 152 ASPINWALL AVE BRKL**  
**Date of Hearing: 07/16/2009**

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 152 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.*

**Enid Starr  
Jesse Geller  
Robert De Vries**

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. Peyrano 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. Peyrano described 152 Aspinwall as a two-family dwelling between Perry Street and Toxteth Street. Her large family day care home is operated in the first floor unit. The dwelling is served by a driveway that

is shared by both units, and accommodates a fenced-in play area. The daycare is located near another large family home daycare at 97 Aspinwall Avenue, in a neighborhood primarily occupied by two-family dwellings.

Ms. Peyrano said she has been operating a large family daycare at this location for 11 years, and has been a daycare provider for 22 years. The daycare is open Monday-Friday from 8:00 a.m. to 6:00 p.m. The daycare serves 8-10 children who range in age from infant to four years old. Although she currently has no special needs children on site, she said that she has cared for special needs children in the past. Ms. Peyrano has one full-time employee who takes the trolley to get to work. The majority of the children arrive at the daycare by car, with two children who walk. The parents, who drive, use street parking and tend to take under five minutes to drop their children off or pick them up. The children occasionally play in the fenced in driveway, or at the Billy Ward Playground.

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

The Building Commissioner, Michael Shepard 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 said that the Planning Board was supportive of this proposal to legalize the large family daycare at 152 Aspinwall Avenue. The daycare has been operating for ten years without complaint, and the Planning Department has received several letters indicating the daycare has not created any nuisance issues in the neighborhood, and one states the daycare has a positive impact on the neighborhood because their presence provides for informal security. The applicant instructs parents to use their safety lights when they use street parking to drop-off and pick-up their children and states both tend to go very quickly. 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 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.**

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 stated that the Building Department agrees with the conditions proposed by the Planning Board.

The Chair asked whether any members of the Board had any questions. Christina Wolfe inquired as to whether Ms. Bhambi owns the home. Ms. Peyrano responded that she rented her unit from the owner that lives in the home as well. Ms. Wolfe inquired about the play area in the driveway and Ms. Peyrano responded that all the cars in the driveway leave in the morning and that the children play outside, weather permitting, for a couple of hours in the morning as well as a short time in the afternoon. The Chairman asked about the parking arrangements. Ms. Peyrano explained that the parents, during pick-up and drop-off, activate their emergency flashers and this has worked many years without a problem. 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 as well.

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.
- f. 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

A True Copy  
ATTEST:

ATTEST:

  
Patricia J. Ward

  
Mark Zuroff, Chairman

Patrick J. Ward  
Clerk, Board of Appeals