



**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. 090034**

Petitioner, Simmin Moghadam, applied to the Building Commissioner for permission to operate a family day care in their home at 83 Pleasant Street. The application was denied and an appeal was taken to this Board.

On 21 May 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 23 July 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 her 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 2 and 9 July 2009 in the Brookline Tab, a newspaper published in Brookline. A 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: SIMMIN MOGHADAM**

Location of Premises: **83 PLEASANT ST BRKL**  
Date of Hearing: **07/23/2009**  
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 **83 PLEASANT ST BRKL**.

Said Premise located in a **M-1.5** (multi-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, Jesse Geller and Board Members Jonathan Book and Rob DeVries. Ms. Moghadam 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 day care homes by right in L, G, O, and I Zoning Districts; by Special Permit in SC, T, F, and M Zoning Districts; and would prohibit them in an S Zoning District. The State of Massachusetts is currently reviewing the applicable day care 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 day care homes prior to the sunset date will remain valid after the revised amendment is adopted.

Ms. Moghadam described her home at 83 Pleasant Street as a three-story row house that was built in 1925. The building is located between Browne and Parkman Streets and is flanked on both sides by two row houses. The petitioner lives on the second floor in a 1,750 square foot apartment. It is the only unit on that floor, with one unit above it and three below it (there are two units in the basement). There is parking in the rear of the building that is used by residents, and street parking in front.

Ms. Moghadam said that she has been operating a day care home at this site for ten years, and for fourteen years before that at 130 Pleasant Street. The home day care operates year round from 8:00 a.m. to 5:30 p.m. She cares for usually less than six children throughout the day, though last year there were as many as eight children on site some days. The home day care serves children from birth to three years of age. Ms. Moghadam employs one assistant, and uses Minot Park for recreation.

She said that drop-off occurs during the morning from 8:00 a.m. to just after 9:00 a.m. In cases of emergency, parents can drop their children off up to a half hour early or late, but she discourages this by charging a fee. Pick-up occurs during the afternoon from 4:00 p.m. to 5:30 p.m. Ms. Moghadam said that she has, on average, one parent that lives far enough away to necessitate driving their children to the daycare. She said that there is usually parking available on Pleasant Street, but should a parent wish to stay longer than a few minutes, they may park in her parking space behind the building. Ms. Moghadam's son takes their car to work and does not return until 6:00 p.m. which leaves their space open all day in case of emergencies.

Board Member Book asked whether the petitioner intended to expand her facility to accommodate the ten children allowed in her license from the state. Ms. Moghadam responded that, while she would like to maintain the potential for expansion to full capacity, she had no intention to do so at this time.

The Chairman asked whether anyone in the audience wished to speak in support of the application. Ms. Nelly Langlais of 125 Kent Street, also a licensed home day care provider, said that Ms. Moghadam ran an efficient, professional operation. Nader Family, the husband of the petitioner remarked that although many letters of support were submitted to the Planning Department regarding the home day care, he understands that two neighbors, one above their unit and one below, wrote letters of complaint regarding the operation. He reported that one complainant after discussion recanted her objection, however, this letter could not be located at the time of the hearing. The Chairman acknowledged receipt of letters in support of the application from abutters and parents of children either currently attending or previously attending the day care. The Chairman asked whether anyone wished to speak against the application. No one rose to speak. The Chairman asked the petitioner about the concerns expressed by her neighbors, particularly concerning the petitioner's use of condominium common areas for storage of strollers and childrens' shoes. Ms. Moghadam responded that she received permission from the condominium organization of unit owners' management company to keep the strollers in the hallway and she said she always keeps them against the wall. Regarding the shoes, she said that she now keeps the childrens' shoes within her unit. When asked about the nuisance caused by the occasional parent ringing the wrong doorbell, she acknowledged that it may have occurred once or twice but observed that it is a natural part of condominium life when multiple units utilize a common entrance. The

Chairman then stated that condominium governance issues are outside the jurisdiction of the Zoning Board of Appeals but that the complaints of a nuisance were relevant inasmuch as they may be a consideration in whether to grant the special permit relief requested. Mr. Geller added that use of the condominium common areas are independently subject to the provisions of the governing condominium documents, including any rules and regulations, and that complaints relative to violations of the provisions of those documents made by other condominium owners are properly addressed to the condominium trustees. The petitioner agreed not to maintain the offending strollers in the condominium common areas if so requested by the condominium association.

Lara Curtis, senior Planner delivered the findings of the planning 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.

Ms. Curtis reported that the Planning Board was supportive of the proposal to legalize the home day care at 83 Pleasant Street, #2. The home day care has been operating within the same vicinity for 24 years without incurring any complaint. The First Steps Day care is operated as a neighborhood home day care, with very few parents who drive their children – and for those who do, they seldom arrive or depart at the same time. It seems unlikely there is a noticeable traffic impact generated by this home day care. The applicant states that she frequently checks in with neighbors to make sure there are no noise issues. The residents in the third floor unit have some complaints about strollers and shoes being left out in common areas, but the Planning Board felt that is an issue that can be worked out with the governing condominium association. Therefore she said, the Planning Board recommends approval of

the special permit for the large family day care home for up to ten children as an accessory use subject to the following condition:

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.**

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 home day care operation and stated that the Building Department supports the requested zoning relief.

The Chairman asked whether any of the other Members of the Board had any further questions. During discussion, Board Member Jonathan Book, stated that the petition, if approved, should include a statement to the effect that the governing condominium documents will remain in full force and effect notwithstanding any relief granted. There was some discussion among the Board Members whether this provision should appear as a condition or in the text of the decision. After discussion, both Jonathan Book and Rob DeVries indicated that they were in favor of the application. Mr. Geller also voted in favor of granting the Special Permit relief requested.

There being no further questions and the Board having deliberated on this matter and having considered the foregoing testimony, the Board concludes that the requirements of **Section 9.05** of the Zoning By-Law have been satisfied and it is desirable to grant a Special Permit in accordance with **Section 4.07 Use 15b** of the Zoning By-Law, operation of a large

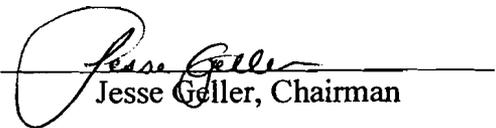
Family Daycare Home as an accessory use for up to ten children. The petitioner was reminded that although a Special Permit may be granted by the Board of Appeals permitting use of her home as a large family day care under the Town's Zoning By-Law, such a use remains subject to her satisfaction of all requirements of the governing condominium documents as enforced by the condominium organization of unit owners. The Board specifically makes the following findings pursuant to Section 9.05 of the Zoning By-Law:

- 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. To this finding, the petitioner is reminded that although a Special Permit may be granted by the Board of Appeals to allow the operation of a home day care facility, the rules and regulations of the condominium association prevail.
- 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 indicating the on-site parking benefitting the home day care with written narrative describing the 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

  
Jesse Geller, Chairman

