



BOARD OF APPEALS
Enid 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. 090038

Petitioner, Paula Gopin, applied to the Building Commissioner for permission to operate a family day care in her home at 6 Blake 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 30, 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 July 9 and 16, 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: PAULA GOPIN
Location of Premises: 6 BLAKE RD BRKL
Date of Hearing: 07/30/2009
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 **6 BLAKE RD BRKL**.

Said Premise located in a T-6 (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
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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 Rob DeVries. Ms. Gopin 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. Gopin described her home and neighborhood at 6 Blake Road as a two-story two-family clapboard colonial built in 1935. There is an attached portico with habitable living area above that extends over the driveway. The house abuts the MBTA trolley tracks and is located at the intersection of Blake Road and

Sumner Road. Ms. Gopin said that she rents the other unit in the home, generally to families, and uses the 1,491 square foot basement exclusively for the daycare. She said that there is a separate entrance on the back of the house to the daycare that parents use to drop-off and pick-up their children. There is a two-car garage on site as well as a parking area that can reasonably accommodate at least four cars, with one dedicated space to Creative Playtime. There are two play areas in the rear yard which she uses for recreation. In addition, there are three street parking spaces in front of the house, one space in the neighboring driveway (which is owned by her mother-in-law) and two additional parking spaces in front of her home. The street parking is occasionally impacted by the high school, and is permit parking until 9:00 a.m. The Ms. Gopin said that she has adjusted the start time of her daycare to accommodate for this.

Ms. Gopin said that she has been operating her Creative Playtime Preschool in this location since 1986. The program generally follows the school calendar, but the applicant does offer an 8 week summer program that runs from 9:00 a.m. to 1:00 p.m. on Tuesday, Wednesday and Thursday. During the school year the applicant has two groups of children. One group attends on Monday, Wednesday and Friday until 1:00 p.m. and the other group attends on Tuesday and Thursday until 12:00 p.m. until December, then 9:00 a.m. to 1:00 p.m. beginning in January (when the children are a little older) the preschool stays open until 1:00 p.m until June. The children are all around the age of two when they start attending the program. There are occasionally children with special needs in the program.

Ms. Gopin said that she employs four teachers to assist in the pre-school. Two of the four teachers drive, and park in the applicant's driveway. One lives on Clark Road and walks to work and the other lives in Newton and is dropped off. The applicant has indicated that of the ten children she currently cares for, three walk to the daycare. The other seven parents drive.

The Chairman asked whether anyone wished to speak in favor or in opposition to the application. No one rose to speak. The Chairman read into the record the names of many supporters that submitted e-mails or letters in support of the requested relief.

Lara Curtis, Senior Planner, delivered 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. Curtis said that the Planning Board was supportive of the proposal to legalize this daycare. The applicant has operated for 22 years without complaint, has a substantial amount of parking, recreational facilities on site and very few abutters. The applicant has indicated neither her mother-in-law nor the MBTA have voiced any concerns over the presence of children on her property, and it appears this daycare is not a nuisance to the surrounding neighborhood. Therefore, she said, 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 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 operation and stated that the Building Department enthusiastically supports the requested zoning relief.

The Chair asked whether any members of the Board had any questions. Jonathan Book responded that this case is similar to the others that have recently come before the Board and that he supports the granting of the requested relief. Rob DeVries stated that he had no issues with the requested relief.

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:

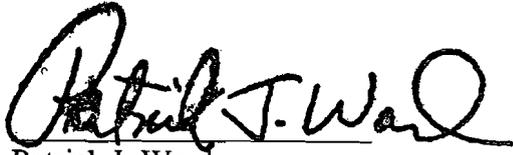
- 1. A parking diagram with written narrative describing pick-up and drop-off procedures shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2. The petitioner shall submit to the Building Commissioner, proof of recording of the decision at the Norfolk County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

Unanimous Decision of
The Board of Appeals


Enid Starr, Chairman

Filing Date: August 7, 2009

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

TO: [illegible]
FROM: [illegible]

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