



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. 090039

Petitioner, Vasantha Avadhani, applied to the Building Commissioner for permission to operate a family day care in her home at 1870 Beacon Street #2. 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 7:15 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 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: **VASANTHA AVADHANI**
Location of Premises: **1870 BEACON ST #2 BRKL**
Date of Hearing: **07/30/2009**

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 6 BLAKE RD BRKL.

Said Premise located in a M-1.5(apartment house) 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, 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. Avadhani described her home and neighborhood at 1862-1870 Beacon Street as an 80 unit low rise apartment complex known as Reservoir Court. The apartment complex site plan is situated in a "U" shape

with a courtyard that opens onto Beacon Street. The complex is comprised of eight attached buildings, with the rear six buildings located partially or entirely in Boston. Ms. Avadhani resides in one of two buildings with frontage on Beacon Street that are located completely within Brookline. The building has six units, and the applicant lives on the first floor in a three bedroom apartment. She said that there is both parallel and angle street parking available in front of the building, as well as the Englewood Station on the MBTA Green Line.

Ms. Avadhani, reported that she has been operating a large family home daycare known as the “Little Kingdom Daycare” at this site since 2001. The daycare operates year-round Monday through Friday from 7:30 a.m. to 6:30 p.m., and has between 8-10 children on site every day. She cares for children aged 4 months to 2.5 years old. There are no special needs children on site. The Little Kingdom Daycare is a family-run operation, and approved family members assist in the daycare. These family members live in the apartment and do not commute to work. Approximately half the children in the daycare arrive on foot, while the other half is driven. Parents use the street parking on Beacon Street for drop-off and pick-up. The applicant lives near the Waldstein (Dean) Park, which can be used for recreation.

The Chairman asked whether anyone in attendance wished to speak in favor of or against the proposal. Ms. Avadhani’s daughter said that the family is involved in the operation and it has been an enriching experience for them as well as their mother. The Chairman stated that the Board had received a letter of support from a parent of one of Ms. Avadhani’s school children.

Lara Curtis, Senior Planner, delivered the comments 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 the daycare at 1870 Beacon Street in Apartment #2. Ms. Avadhani has operated the daycare at this site for eight years without complaint, and with the support of the landlord. There is an ample amount of street parking available in

front of the building that is rarely fully utilized. As the daycare is located on the first floor, it is unlikely for there to be an increase in pedestrian traffic on the stairs which would cause a nuisance for residents and unsafe conditions in the event of a fire. The Planning Department has received one letter of support for the daycare indicating neighbors comment that they are pleased to have children in the building. Therefore, the Planning Board recommends 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.**

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**:

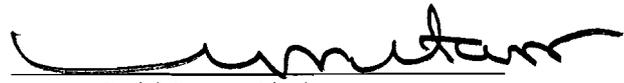
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.

- 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:

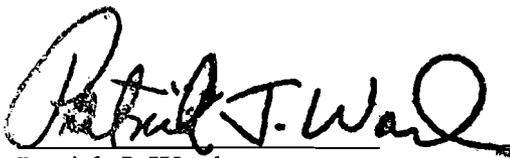
1. A parking diagram with written narrative describing pick-up and drop-off procedures shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. The petitioner shall submit to the Building Commissioner, proof of recording of the decision at the Norfolk County Registry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