



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. 090041

Petitioners, Reisa Sperling and Keith Johnson applied to the Building Commissioner for permission to construct open porches on the rear of their home at 10 Auburn Place. The application was denied and an appeal was taken to this Board.

On 11 June 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 10 September 2009, at 7:15 p.m. in the Selectmen's hearing room, 6th floor, Town Hall 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 16 and 23 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:

Petitioner: SPERLING, REISA & JOHNSON, KEITH

Location of Premises: **10 AUBURN PL BRKL**
Date of Hearing: **09/10/09**
Time of Hearing: **7:15p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th floor**

A public hearing will be held for a variance and/or special permit from:

5.43; Exceptions to Yard and Setback Regulations, Special Permit Required.
5.70; Rear Yard Requirements, Variance Required.
8.02.2; Alteration or Extension, Special Permit Required of the Zoning By-Law to construct open porches to the rear of the home at **10 AUBURN PL BRKL.**

Said Premise located in a **F-1.0** (three family) residential 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, Jesse Geller and Board Members, Jonathan Book and Rob DeVries. The petitioners, Dr. Reisa Sperling and Dr. Keith Johnson were accompanied by their architect, J Stewart Roberts. Dr. Sperling presented the case before the Board.

Dr. Sperling described her property at 10 Auburn Place as a two-and-a-half story home that was built in 1917. The home was formerly converted from a single-family to a two-family residence, but has since been converted back to a single family home. There is a rear porch at grade that is roughly 10' by 24' and is located near the rear lot line. The yard has an ample

amount of landscaping on all sides of the lot, and several small trees and a wood stockade fence along the rear lot line. Auburn Place is a private way, with a variety of housing styles ranging from single to multifamily housing.

Dr. Sperling said the she and her husband, Dr. Keith Johnson, have lived at the subject property for eighteen years and are proposing to construct two new decks in addition to reconstructing and enlarging the existing at grade deck, all to the rear of the house. She said that when they bought the property it had multiple units and they have since worked very hard restoring the home to its present single family configuration. She said that there will be a spiral staircase to connect the second and third story decks that is intended to be a means of access. The decks will likely be constructed of trex type decking with mahogany railings, but the materials have not yet been finalized. The existing deck at grade will be reconstructed. The deck at grade and the second story decks will measure 10' by 24'9", and the third floor deck will measure 10' by 10'.

In addition to the decks, Dr. Sperling said that they are proposing to make a number of renovations to the home which do not require zoning relief. They will be removing the vinyl siding and repairing and replacing the underlying clapboard as necessary. Dr. Sperling said that they will also be replacing the roof, gutters, downspouts, porch columns, railings, and skirt, and will repoint the chimney and foundation as needed. In addition, there is a fire escape currently attached to the exterior side of the home that they will be removing. She said that these improvements will add to the beauty and value of the home. Dr. Sperling reported that to meet the requirement for counterbalancing amenities under **Section 5.43** of the Zoning By-Law, they plan to install more landscaping in addition to the cosmetic improvements to their home.

The petitioners' architect, Stu Roberts, presented elevations and plans for the project. Mr. Stewart also presented computer modeling graphics to better represent the final appearance of the home and its relation to the neighboring properties.

Chairman Geller asked whether anyone in attendance wished to speak in favor of or against the proposal and no one rose to speak. Mr. Geller noted that 10 of the surrounding neighbors submitted letters of support for the proposed relief.

Polly Skoe, Assistant Director for Regulatory Planning, delivered the findings of the Planning Board .

Section 5.70 – Rear Yard Setbacks

Setbacks	Required	Existing	Proposed	Finding
Rear Yard	30	11'3"	11'3"	Variance/ Special permit*

* Under Section 5.43, *Exceptions to Yard and Setback Regulations*, the Board of Appeals may substitute, by special permit, other dimensional requirements for yards and setbacks if counterbalancing amenities are provided. The applicant has indicated the extensive renovations to the exterior of the home will serve as their counterbalancing amenity.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming structure.

Ms. Selkoe said that the Planning Board was supportive of this proposal but has some concerns about the decreased privacy and visual impact on neighbors. The applicants stated they had spoken with all of their neighbors, including their elderly rear abutters, and none of them had any issue with the proposal. The Planning Board requested the applicants bring written evidence showing support from their abutters to the Board of Appeals meeting, which the applicant has submitted. The Planning Board also suggested minimizing the impact on neighbors, current and future, could be achieved by decreasing the size of the third story deck. Some Planning Board members felt three decks were excessive and created the appearance of a traditional decker

which is contrary to the efforts of the applicants to restore the original character of the home. Other Planning Board members felt the decks had a very clean appearance and did not look overdesigned. While the applicant is proposing a number of amenities that certainly improve the physical condition and appearance of this house, Planning Staff would like the applicant to offer an amenity that specifically counterbalances the relief being sought in this case. Due to the addition of the two decks on the second and third story including a spiral staircase as well as the replaced first floor deck, it seems reasonable the applicants should provide some variety of screening (landscaping, trellis or latticework or things of that nature) to maintain a reasonable level of privacy for abutting residences. Therefore the Planning Board recommends approval of the plans by J. Stewart Roberts, dated 5/11/2009, and the site plan by Boston Survey Inc., dated 9/1/09, subject to the following conditions:

1. Prior to the issuance of a building permit, final plans indicating all decking materials and dimensions shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, a final landscaping and/or screening plan indicating all counterbalancing amenities shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. Mr. Shepard noted that two of the letters of support came from the immediate abutters to the rear, those most affected by any potential loss of privacy. Mr. Shepard opined that since they were supportive of the project, the screening requirement might be somewhat

excessive. Mr. Shepard said that not only were the planned cosmetic improvements a value to the community but the reduction in the number of units was an improvement as well. He said that the Building Department was supportive of the relief as well as the conditions proposed by the Planning Board.

The Board, having heard all the testimony, deliberated on the merits of the application. Board Member DeVries asked the Building Commissioner about limitations on the height of decks. Mr. Shepard responded that other than the conventional height limitations in the By-Law, there were no specific height requirements for decks. Board Member Book asked if the plans provided to the Board represented the deck size reduction recommended by the Planning Board. The petitioner responded that the plans provided do represent the reduced size. The Board then determined, by unanimous vote that the requirements of Section 9.05 of the Zoning By-Law: (i) and Section 5.43 of the Zoning By-Law to waive the requested setback requirements under Section 5.70 of the Zoning By-Law if appropriate counterbalancing amenities hereinafter identified are provided; and (ii) under Section 8.02.2 of the Zoning By-Law, to alter a pre-existing, non-conforming structure, all have been satisfied, and made the following specific findings pursuant to said 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.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, final plans indicating all decking materials and dimensions shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, a final landscaping and/or screening plan indicating all counterbalancing amenities shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final elevations, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: September 18, 2009



Jesse Geller, Chairman

RECEIVED
TOWN OF BROOKLYN
TOWN CLERK
18
A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals