



# *Town of Brookline*

## *Massachusetts*

**BOARD OF APPEALS**  
Enid Starr, Co-Chair  
Jesse Geller, Co-Chair  
Robert De Vries

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Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043  
Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 090043

Petitioners, Daniel, Doris and Matthew Partan applied to the Building Commissioner for permission to construct additions on the second and third floors of their home at 200 Kent Street. The application was denied and an appeal was taken to this Board.

On 2 July 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 3 September 2009, at 7:00 p.m. in the Selectmen's hearing room, 6<sup>th</sup> 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 13 and 20 August 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: PARTAN TRS DANIEL G. DORIS, MATTHEW A.**

Location of Premises: **200 KENT ST BRKL**  
Date of Hearing: **09/03/09**  
Time of Hearing: **7:00p.m.**  
Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup> floor**

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

- 1. 5.30, Maximum Height of Buildings, Variance Required.**
- 2. 5.43, Exceptions to Yard and Setback Regulations, Special Permit Required.**
- 3. 5.60, Side Yard Requirements, Variance Required.**
- 4. 8.02.1. a, Alteration or Extension, Special Permit Required** of the Zoning By-Law to construct a third floor addition with sundeck and an addition on the second floor at **200 KENT ST BRKL.**

Said Premise located in a T-5 (two-family and attached single-family) residence 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. The petitioners, Daniel, Doris and Matthew Partan who reside at 200 Kent Street were accompanied by their Attorney, Thomas J. May, 300 Washington Street, 2nd Floor. Brookline, MA 02445.

Attorney May said that those in attendance that have children look forward to the day when they grow and leave the family home. He said times have changed and due to many factors children

often move back home and sometimes with spouses and children, and such is the case with the Partan family.

Attorney May described the home at 200 Kent Street as a large two-family shingle-style dwelling built in 1894 at the corner of Kent Street and Kent Square. Two parking spaces exist to the left of the dwelling on Kent Street, and most of the rest of the property is landscaped; a stockade fence shields the view of the yard from Kent Street.

Attorney May said that his clients wish to construct a modest second-and third-floor addition and sundeck to the dwelling to add additional living space. A portion of the second floor and the existing sundeck would be demolished to allow for a new second- and third-floor addition, with a sun deck at the third-floor level. The addition would essentially be a new gable dormer, whose ridge would connect just below the building's existing roof ridge. The addition would be finished with wood shingles. The proposal would provide for a new bedroom and study and modified kitchen. The dwelling would still comply with FAR requirements with this addition. Attorney May said that although they were cited as needing side yard setback relief, the additions were being constructed atop the existing structure and would in fact be no closer to the side lot line than the current non-conforming condition. Attorney May said that the proposal met all the requirements of **Section 9.05** of the Zoning By-Law for the granting of a Special Permit. Additional landscaping in the side yard, to include reconstruction of a foot path and additional plantings, will serve as the required counterbalancing amenity under **Section 5.43** of the Zoning By-Law.

Chairman Geller asked whether anyone in attendance wished to speak in favor of or against the application. No one rose to speak and Board Member Book noted that seven neighbors on Kent Square signed a petition in support of the proposal.

Lara Curtis, Senior Planner, delivered the findings of the Planning Staff.

**Section 5.30 – Maximum Height of Buildings:** The applicant has provided elevation information for the property that was not available when plans were initially submitted to the Building Commissioner. This information indicates the proposal would comply with height requirements, therefore, a variance from this section is not required.

**Section 5.43 – Exceptions to Yard and Setback Regulations**

**Section 5.60 – Side Yard Requirements**

**Section 8.02.1.a – Alteration or Extension:** A special permit is required to alter this non-conforming structure.

	Existing	Required	Proposed	Finding
Side Yard Setback	7.4 feet	10 feet	7.4 feet	Special Permit*
Height	33.75 feet	35 feet	33.75 feet	Complies**

\*Under **Section 5.43**, the Board of Appeals may substitute other dimensions for yard and setback requirements if counterbalancing amenities are provided. In this case, the proposal does not expand upon the building footprint, however, the new addition would be approximately 8 feet from the property line. The applicant has indicated landscaping along the affected side yard would be the counterbalancing amenity.

\*\*Under **Section 5.30**, the proposed building height should be measured by adding ¼ of the distance between the building and the lowest lot line to the elevation of the lowest lot line, and starting from there to measure the building. Measuring the dwelling in this manner indicates the building and the proposed addition complies with the maximum height requirement, and does not require a variance as initially cited.

Ms. Curtis said that the Planning Board was not opposed to the proposed addition and roof deck, and the Board was pleased that the applicant modified the design of the addition in response to their comments as the revised design better integrates the addition with the existing dwelling and retains several of the building’s unique characteristics. The applicant has indicated the counterbalancing amenity will be in the form of additional landscaping along the minimal setback, including the installation of a new path and plantings. The modified addition design combined with the additional planned landscaping will result in an attractive project that should not cause significant shadow effects for the building’s neighbors. Therefore, the Planning Board recommended approval of the proposal and the submitted plans, including the site plan prepared by Lawrence Hughes and dated

4/7/09, and the revised floor plans and elevations, prepared by Phung Porzio Studio of Architecture, dated 6/8/09, and submitted 8/20/09, subject to the following conditions:

1. **Prior to the issuance of a building permit, final building elevations, both existing and proposed, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
2. **Prior to the issuance of a building permit, a final landscaping plan, indicating all counterbalancing amenities, shall be submitted to the Assistant Director for 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 building 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 represented that the subject home has heavy tree cover and is adjacent to the Northeastern football field. He said that the home is large with considerable detail. It appeared to Mr. Shepard that the architect carefully included details to create a well integrated addition. He said that the Building Department was supportive of the relief as well as the conditions proposed by the Planning Board.

Board Member DeVries asked whether any changes were proposed for the outside lighting and Attorney May responded that there were no changes to the lighting in the proposal.

The Board, having heard all the testimony, deliberated on the merits of the application. Board Member DeVries commented that it was a modest, attractively designed addition and he was in favor of granting the requested relief. The Board Members unanimously agreed that the project was appropriate for the requested relief. The Board then determined, by unanimous vote that the requirements are satisfied under and it is desirable to grant Special Permits under **Section 9.05** of

the Zoning By-Law in accordance with Section 8.02 of the Zoning By-Law, to alter a pre-existing, non-conforming structure, and Section 5.43 of the Zoning By-Law, to waive the requested setback requirements subject to appropriate counterbalancing amenities being provided, 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 building elevations, both existing and proposed, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
2. **Prior to the issuance of a building permit, a final landscaping plan, indicating all counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
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Unanimous Decision of  
The Board of Appeals

Filing Date: September 11, 2009

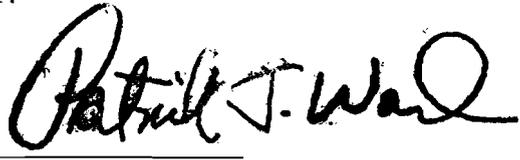
  
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Jesse Geller, Chairman

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ATTEST:

SEP 11 AM 8:08



Patrick J. Ward  
Clerk, Board of Appeals