

**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. 090058

Petitioner, Stephen Pitrowski, applied to the Building Commissioner for permission to construct a third floor addition to create a new dwelling unit and add another dwelling unit in the basement, thereby converting an existing two-family residence to a four family at 48-50 Jamaica Road. The application was denied and an appeal was taken to this Board.

On 20 August 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 1 October 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 its 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 10 and 17 September 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: **PETROWSKI, STEPHEN**

Location of Premises: **48-50 JAMAICA RD BRKL**

Date of Hearing: **10/01/2009**

Time of Hearing: **7:00 p.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.) **5.05; Conversions, special permit required.**
- 2.) **5.09.2.d; Design Review, special permit required.**
- 3.) **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
- 4.) **5.50; Front Yard Requirements, variance required.**
- 5.) **5.60; Side Yard Requirements, variance required.**
- 6.) **6.01.2.a; General Regulations Applying to Required Off-street Parking Facilities, special permit required.**
- 7.) **6.02.1; Off Street Parking Space Regulations, variance required.**
- 8.) **For the Design of All Off-street Parking Facilities:**
  - **6.04.2.d; Variance required**
  - **6.04.2.f; Variance required**
  - **6.04.3; Variance required**
  - **6.04.4.b; Variance required**
  - **6.04.5.b; Variance required**
  - **6.04.12; Special permit required**
  - **6.04.14; Variance required.**
- 9.) **8.02.1.a ; Alteration or Extension, special permit required**

of the Zoning By-Law to construct a third floor addition to create a new dwelling unit, and to convert the existing basement to create another dwelling unit, thereby converting the premises from an existing two-family into a four-family residence per plan at **48-50 JAMAICA RD BRKL**.

Said Premise located in a **M-1** (apartment house) 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 Mark Zuroff. The petitioner was represented by Attorney Kenneth B. Hoffman of Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116.

Attorney Hoffman described the site and neighborhood at 48-50 Jamaica Road as a two-and-a-half-story, two-family dwelling across from Harry Downes Field near the Boston/Brookline border. The surrounding neighborhood consists of two- and three-family dwellings, several of them of the three-decker style. To the rear of the dwelling is a passageway owned by the Town of Brookline that runs behind several of the dwellings along Jamaica Road, although it is not clearly demarcated as a passageway, as well as the High Street Veterans development, a Brookline Housing Authority property with approximately 186 housing units.

Attorney Hoffman said that the petitioner, Stephen Pitrowski, would like to construct a third-floor addition that would alter the gable roof and change the dwelling into a three-decker structure. He said that the initial plan was to finish off the basement to provide a unit there as well. His clients, in response to concerns from the neighborhood, decided to incorporate portions of the basement into the first floor unit (rather than configure a separate fourth unit in the basement) thereby converting the building from a two-family dwelling into a three-family dwelling. The project would add approximately 317 finished s.f. to the basement, and add 1,410

s.f. for the new third floor, resulting in a total square footage of approximately 5,145 s.f. New front and rear porches and stairs would be constructed, as well as a new roof deck on the rear portion of the roof. The front first-floor porch details will remain largely the same.

In conjunction with the work in the dwelling structure the petitioner proposes to demolish the existing garage and have five parking spaces in the rear yard, two of which would be compact parking spaces. The petitioner is proposing a turnaround area where the demolished garage was located to ease on-site circulation. The dwelling shares a partial common driveway on its north side with 52 Jamaica Road.

Attorney Hoffman said that the residence has been in a slow decline relative to maintenance in recent years. He said that the petitioner wishes to restore the structure, maintaining significant elements such as porch/trim details and siding. He said that although converting the structure from a two-story building with a gable roof to one that is three stories with a flat roof is a significant change, it is in keeping with other residences along Jamaica Road.

Leah Greenwald, the petitioner's architect, presented to the Board the proposed elevations and plans for the proposed alterations. Ms. Greenwald stated that the petitioner proposed to demolish the existing garage and use the area, in part, for planted open space.

Chairman Geller asked whether any members of the Board had any questions at this point.

Chairman Geller then asked whether anyone desired to speak in favor of the proposed relief. No one spoke in favor of the proposed relief.

Mr. Geller asked whether anyone desired to speak in opposition to the proposed relief for the project.

Theresa Vitorino of 52 Jamaica Road stated that she did not believe the applicant needed to put a deck on the roof, because they have enough open space down below if they take the garage out. Ms. Vitorino presented to the Board pictures of the open space on her own neighboring property in support of her statement.

Phyllis O'Leary who lives on Jamaica Road stated the following:

She is a home owner of a three family and has lived there since she was seven years old. She is against the application because she likes the neighborhood and its two and three family structures and the way the street looks. She stated that her fear is that this could set a precedent for other two and three family structures to be expanded into more units. Ms. O'Leary commented that her immediate fear is that the area she lives in is very congested and there is not a lot of green space in the backyards like there used to exist because some of the houses have turned into condos. She noted that the green space is quickly disappearing. Ms O'Leary continued that her other concern is with the roof deck which will take up half of the size of roof and the height of its fence or railing making the building appear to be more of a four family home than a three family home. Ms. O'Leary stated that she agreed with Ms. Vitorino's comments regarding the roof deck, open space and demolition of the garage and in support presented photographs of neighboring properties as examples of alternatives for provision of open space.

Tom Albertowski of 97 Highland Road stated that he is also concerned that every time there is a conversion the neighborhood loses some greenery and gets more black pavement. He further commented that Section 6.1.2. provides that you can waive half the number of parking spaces when converting to additional units. He suggested keeping the four parking spaces that are already there and not adding a fifth one. Mr. Albertowski added that there is a bus stop one

block away and that it is a ten minute walk to the Green Line. He continued that the Town does not need to be adding all of these parking spaces in a place that probably couldn't be better in terms of accessibility to public transit. He also noted that the large roof deck is something that is not common to the neighborhood, although there are smaller roof decks. Mr. Albertowski questioned how determination of the landscaped open space was made and requested an explanation of the calculation. Alan Cohen of 63 Highland Road stated that he concurred with Ms. O'Leary's comments concerning the density issues. Mr. Cohen also raised concerns about a neighborhood that has traditionally had difficulties with parking. Mr. Cohen noted that it is not unusual to come down Jamaica Road and see cars not only parked on both sides, one side illegally, but also across the driveways.

Margery Posner from 68-70 Jamaica Road on her own behalf and on behalf of of the other occupants of the two family house in which they live noted their concern with the renovation occurring and changing the house to a three family. She stated that it is a beautiful street. and is well kept by all of the neighbors. She added that changing the block is very, very disheartening. Ms. Posner asked what benefit is it to the neighborhood?

Polly Selkoe, Assistant Director for Regulatory Planning reviewed the Planning Board Report including the comments of the Planning Board.

The zoning relief required for the project is as follows:

**Section 5.05 – Conversions:** When converting a dwelling to create additional units in an M District, the structure shall conform to all dimensional requirements specified in Section 5.01. However, the Board of Appeals by special permit may waive any of said dimensional requirements, except minimum lot size, provided no previously existing nonconformity is increased. *Special permit required.*

**Section 5.09.2.d – Design Review:** Since this proposal is to convert a two-family dwelling into a four-family dwelling, a special permit for design review is required. The applicant has submitted a Community and Environmental Impact statement. The most applicable standards are described as follows:

- a. *Preservation of Trees and Landscape:* There is only one tree on the property, which if determined should be retained, will need to be moved further towards the rear yard. Existing landscaping is in poor condition. The applicants are proposing additional landscaping as a counterbalancing amenity, particularly in the rear yard area.
- b. *Relation of Buildings to Environment:* The proposal will increase the height of the dwelling, comparable to the dwelling located immediately to the north. The neighboring dwelling to the south is a two-and-a-half story dwelling.
- c. *Relation of Buildings to the Form of the Streetscape and Neighborhood:* Jamaica Road has a mix of two- and three-family dwellings, including both triple-deckers and gable-roofed two-and-a-half-story dwellings. The plans indicate the addition of elements to integrate the dwelling's style with other triple-deckers on the street, including upper story front porches and a trim band between the first and second levels.
- d. *Open Space:* The property currently has an adequate rear yard, although its condition needs improvement. Some of this rear yard will be removed when the garage is demolished and the parking is installed, however, new landscaping could improve the condition of the remaining open space. The applicant is proposing new front porches and small rear decks and a roof deck.
- e. *Circulation:* The existing driveway and parking area will be retained and somewhat expanded with the removal of the rear garage. Due to the increase in units, the vehicular circulation on site will also increase. Vehicles parked as shown in the initially submitted plan would have had difficulty leaving the site if all of the parking spaces were occupied; the applicant has revised the parking plan to provide for five parking spaces with an easier egress plan.

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

**Section 5.50 – Front Yard Requirements**

**Section 5.60 – Side Yard Requirements**

**Section 5.91 – Usable Open Space**

**Section 6.01.2.a – General Regulations Applying to Required Off-street Parking**

**Facilities:** When a structure is converted for one or more additional units in an M district, parking requirements for the entire structure shall be provided. However, the Board of Appeals by special permit may waive up to half the number of required parking spaces. *Special permit required.*

**Section 6.02.1 – Off Street Parking Space Regulations**

**Section 6.04 – Design of All Off-street Parking Facilities**

- 2.d: minimum aisle width of 23 feet
- 2.f: parking lots shall be designed so as not to require or encourage cars to back into a public or private way in order to leave the lot
- 3: parking facilities shall be designed so that each motor vehicle may proceed to and from a parking space without requiring the moving of another motor vehicle
- 4.b: entrance and exit drives shall be a minimum of 20 feet wide for two-way use
- 5.b: the surfaced area of a parking lot and all entrance and exit drives set back from street lot lines at least 10 feet, and at least 5 feet from all other lot lines
- 12: a special permit may be issued to waive the dimensional requirements of Article 6 when new parking facilities are being installed to serve existing structures and land uses
- 14: no more than 40% of the building’s front façade width or 24 feet, whichever is less, may be devoted to parking or other vehicular use, including garage or drive-through space

<b>BUILDING</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Front Yard Setback</b>	15 ft (main dwelling); porches less than half the width of the front wall: 11.5 ft	17.1 ft; Porch (exceeds more than ½ the width of the front wall): 10 ft	17.1 ft; Porch: 10 ft	Special Permit*
<b>Side Yard Setback</b>	15.3 feet (10 + L/10)	5.4 feet	5.4 feet	Special Permit*
<b>FAR</b>	1.0 (6,060 s.f.)	2,570 s.f.	5,145 s.f.	Complies
<b>Minimum Lot Size</b>	6,000 s.f.	6,060 s.f.	6,060 s.f.	Complies
<b>Minimum Usable</b>	1,029 s.f.	649 s.f.	1090 s.f.	Complies



Open Space			(522 s.f. ground level; 568 s.f. roof deck)	
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\*Under **Section 5.43**, the Board of Appeals may by special permit waive yard and setback requirements if counterbalancing amenities are provided. Additionally, under **Section 5.05**, the Board of Appeals may waive dimensional requirements for existing structures when they are converted for additional units.

<b>PARKING</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Finding</b>
<b>Spaces</b>	9 spaces	3-4 (est.)	5	Special Permit**
<b>Side Yard Setback</b>	5 feet; or 7 feet with a 2-foot overhang	0 feet	5 feet	Complies
<b>Driveway Width</b>	20 feet (two-way)	11.2 feet	11.2 feet	Special Permit†
<b>Parking Area Width</b>	No more than 10.8 ft (40% of façade width)	11.2 feet	11.2 feet	Pre-existing, non-conforming

\*\*Under **Section 6.01.2.a**, the Board of Appeals may waive up to half of the total required parking spaces when a dwelling in an M district is converted for additional dwelling units.

†Under **Section 6.04.12**, the Board of Appeals may waive the dimensional requirements of Article 6 when new parking facilities are being installed to serve existing structures and land uses.

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

Ms. Selkoe reported that the Planning Board was not opposed to the conversion of this dwelling into three units, however, the proposed basement unit as a fourth unit appeared excessive. Since there is not a significant change in grade to allow for adequate windows at the basement level, a unit in the basement would have poor light and ventilation; this finished area would be more appropriate as play or game room space rather than living and kitchen space. The petitioner has agreed to revise the proposal so that there would only be three units on site. Additionally, the revised parking plan with five parking spaces should provide sufficient parking

for a three-unit building, and the petitioner should work to lessen the turn area so that more usable open space can be provided at ground level. The initial proposal did not meet the requirement for usable open space, but with the revised parking plan and enlarged roof deck, the proposal has been brought into compliance. There is some concern the roof deck is too large, but the petitioner has also proposed to install a privacy screen for the roof deck. Finally, the open rear stair providing secondary egress as well as roof deck access would be more attractive and better sheltered from poor weather if it is enclosed or screened. The petitioner agreed to consider possible alternative designs for the rear stair. The petitioner's initial plans were vague and lacking in detail, but the revised plans are a significant improvement and include appropriate characteristics for a triple-decker dwelling. Although the increase in height for the building is a concern, especially considering how close this dwelling is to neighboring dwellings, the triple-decker style is very apparent along this street and will not be out-of-place. Additionally, the installation of new landscaping would greatly improve the site's appearance. Therefore, the Planning Board recommended approval of the proposal and submitted plans, including the certified plot plan prepared by Boston Survey and dated 09/08/09, and the plans and elevations prepared by Leah Greenwald and dated 09/01/09, subject to the following conditions:

- 1. There shall be a maximum of three units on the property and five parking spaces, with no separate unit in the basement. However, the basement may be used as finished or common space for the units.**
- 2. Prior to the issuance of a building permit, a final site plan, indicating a parking plan for five vehicles and usable open space in compliance with what's required by the Zoning By-law, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 3. Prior to the issuance of a building permit, final floor plans and elevations, including a re-design of the rear stair, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**

4. Prior to the issuance of a building permit, a final landscaping plan, indicating planting and hardscape details for both the front, side and rear yards and all counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
5. Prior to the issuance of a building permit, all demolition approvals for the roof, and if applicable, the rear garage, shall be obtained from the Preservation Commission.
6. 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 for the Building Department. Mr. Shepard said that he attended the Planning Board hearing for this proposal. He said that many of the neighbors were concerned about the increased density, parking, height of the building, and the exterior stair required as a second means of egress and the deck atop the new third floor unit. He said that he was also concerned about the exterior stairs, exposed to the elements to serve as a second means of egress as required by the Building Code. Mr. Shepard also commented that, as a general rule, he is opposed to exterior rooftop decks but since the proposal is to convert the premises into condominium units he is less concerned. He said that in response to the neighbor concerns the petitioner eliminated the basement unit from their proposal, enclosed the exterior stairs and are working to minimize the size of the rooftop deck. Mr. Shepard said that the Building Department supports the recommendation of the Planning Board as well as their proposed conditions.

Board Members, Zuroff, Book and Chairman Geller asked counsel for the petitioner whether the deck was needed to satisfy the requirement for usable open space on the site. Attorney Hoffman said that it was needed because many of the dimensions on the site did not

satisfy the Zoning By-Law minimum requirement of a 15' dimension of the Zoning. Chairman Geller asked whether the height of the required railing on the deck violated the height requirements of the Zoning By-Law and Mr. Shepard replied that they did not.

Board Member Book expressed reservations about the size of the rooftop deck. He opined that going from a two-story, gable roof structure to a three-story, decker type structure was an extreme change for the building. The addition of the deck only exacerbates that change. Chairman Geller and Board Member Zuroff were less concerned about the deck but asked the petitioner to consider options to address Board Member Book's concerns, including decreasing the size of or eliminating entirely the roof deck. Attorney Hoffman said that the petitioners have tried to be responsive to neighborhood concerns throughout the process and requested that the Board continue the hearing so the petitioner could have time to consider alternatives. Chairman Geller then announced that the hearing would be continued to 22, October 2009 at 7:30 pm.

The continued public hearing was opened at the predetermined date and time.

Attorney Hoffman stated that his understanding of the focus for the continued hearing was to be regarding the roof deck. He said that the petitioner has been working diligently with both the Planning and Building Departments to address the roof deck issue. He said the petitioners had two proposals to present to the Board. The first proposal would be to build the deck of a minimum size, but which is not less than 15' by 15' to satisfy the requirements for usable open space. The second proposal is to eliminate the deck entirely and request relief available by Special Permit in Section 5.05 of the By-Law, which would not require counterbalancing amenities. The petitioner, Mr. Pitrowski, presented and referred to a revised plan entitled "alternate proposal 3a" dated 10-22-09, and said that the revised plan does not include the roof deck and retains the existing garage and current parking layout, thereby

maximizing the usable open space on the lot. Chairman Geller entered the plan showing “alternative proposal 3a” into evidence as Exhibit “A” to the continued hearing. Mr. Pitrowski said additional open space would be provided by taking space previously pavement and providing more grass area. He said that the area behind the garage while not wholly owned by him adds to the appearance of usable open space.

Attorney Hoffman reminded the Board that Section 5.05, for which the petitioner was cited, does not require counterbalancing amenities.

Board Member Book reviewed the two options and said the question is whether or not the deck should be constructed to meet the minimum requirements of the By-Law. He asked about the condition of the existing garage and the petitioner replied that it is serviceable and just needs to be cleaned-up and it looks like many of the garages in the neighborhood. Mr. Book said that the option eliminating the roof deck is clearly the most desirable if the Board has the ability to waive some of the usable open space requirement under Section 5.05 of the Zoning By-Law. He said that the neighborhood seemed blessed with open space given the proximity of the park across the street. Mr. Book said that while supportive of the current proposal, he personally was not in favor of converting a two-story residential structure into a three-story decker. But, he said he understood that the By-Law provided for the conversion.

Chairman Geller clarified for the Board that the total usable open space being proposed without the roof deck is 818 s.f. including the expanded area previously used for parking. Chairman Geller said that it appeared that the petitioner under this proposal was not expanding the non-conforming open space condition but actually reducing the non-conformity.

Board Member Zuroff opined that the proposal for the elimination of the roof deck seemed an appropriate solution to many of the misgivings about the deck voiced by the

neighbors. He asked whether a separate permit would be required for the garage and the Building Commissioner said it most likely would be required.

Chairman Geller asked Ms. Selkoe whether the Planning Department had any comments concerning the proposed changes to the plan previously submitted. She said that staff would be supportive of retaining the garage and eliminating the roof deck; that the garage could become an effective buffer for the neighbors.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that the conditions of Section 5.05 (Conversions), Section 5.09.2.d (Design Review), Section 5.43 (Exceptions to Yard and Set-back Requirements), Section 5.50 (Front Yard Requirements), Section 5.60 (Side Yard Requirements), Section 5.91 (Usable Open Space), Section 6.01.2.a (Waiver of up to one half of the Parking Spaces), Section 6.04.12 (New Parking to Serve Existing Use) and Section 8.01.2.a (Alteration or Extension of a Pre-existing, Non-conforming Structure) of the Zoning By-law necessary for the granting of the requested relief have been satisfied and that it is desirable to grant Special Permits in accordance with said Sections. The Board also made 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.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

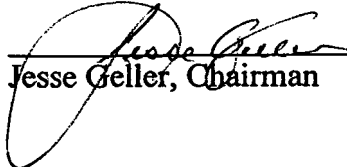
The Board referenced “**alternate proposal 3a**” dated 22 October 2009 as the plan of record (superseding the prior plan submitted) and noted that this plan called for the elimination

of the roof deck, retention of the existing garage and the provision for additional open space in an area previously used for parking.

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

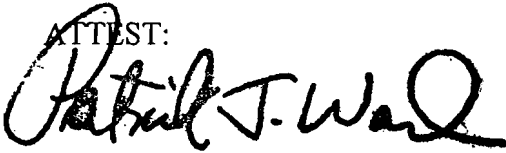
1. There shall be a maximum of three units on the property and five parking spaces, with no separate unit in the basement. However, the basement may be used as finished or common space for the units.
2. Prior to the issuance of a building permit, a final site plan, indicating a parking plan for five vehicles and usable open space in compliance with what's required by the Zoning By-law, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to the issuance of a building permit, final floor plans and elevations, including a re-design of the rear stair, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
4. Prior to the issuance of a building permit, a final landscaping plan, indicating planting and hardscape details for both the front, side and rear yards and all counterbalancing amenities, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
5. Prior to the issuance of a building permit, all demolition approvals for the roof, and if applicable, the rear garage, shall be obtained from the Preservation Commission.
6. 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

  
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Jesse Geller, Chairman

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK  
Filed Date: December 03, 2009  
Copy  
2009 DEC -3 A 11:49

ATTEST:

A handwritten signature in black ink that reads "Patrick J. Ward". The signature is written in a cursive style with a large initial "P" and a large "Q" at the end.

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Patrick J. Ward  
Clerk, Board of Appeals