



TOWN OF BROOKLINE

Massachusetts

BOARD OF APPEALS

DIANE R. GORDON, Co-Chair
HARRY MILLER, Co-Chair
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PATRICK J. WARD, Secretary

TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 060013

Petitioner, Nationwide Health Properties, Inc., applied for modification of Board of Appeals Case #3397 to allow the conveyance of a 240 square foot strip of land to owners of the abutting parcel located at 1262 Boylston Street, Brookline.

On March 2, 2006, 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 March 30, 2006 at 7:30 p.m., as the time and place of a hearing on the request for modification in the Selectmen's Hearing Room on the sixth floor of the Town Hall. 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 scheduled hearing was published March 23, 2006 and March 30, 2006, 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:

Petitioner: **NATIONWIDE HEALTH PROPERTIES, INC.**
Location of Premises: **615 HEATH ST BRKL**
Date of Hearing: **03/30/2006**
Time of Hearing: **07:30 p.m.**
Place of Hearing: **Selectmen's Hearing Room**

A public hearing will be held for

Relief needed to allow conveyance of pedestrian access easement to owners of abutting parcel

Of the Zoning By-Law to modification of Board of Appeal Case #3397

At 615 HEATH ST BRKL

Said Premise located in a G-2.0 district.

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.

**Diane R. Gordon
Harry Miller
Bailey Silbert**

Publish: 03/23/2006, and 03/30/2006

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Board members Diane R. Gordon, Bailey Silbert and Enid Starr. Petitioner was represented at the hearing by Attorney Eric B. Goldberg of Seegel, Lipshutz & Wilchins, P.C.

At the hearing, Tim Greenhill, Planner of the Planning Department, distributed the Planning Board Memorandum dated March 23, 2006. Mr. Goldberg then described the factual background for the petition as follows:

Under Case #3397, the Board of Appeals approved construction of a life care facility at 615 Heath Street consisting of 51 assisted living units and 135 beds of nursing care and an underground parking garage for 79 cars. Denoted on the approved plans was a strip of land approximately 80 feet in length and 3 feet in width referred to on the plans as a pedestrian access easement (the "Easement"). The Easement at all times has been utilized for the benefit of the neighboring parcel located at 1262 Boylston Street, which is owned by Durbin Trust (the "Trust"). The Petitioner desires to convey the Easement strip to the Trust.

Mr. Goldberg explained that because the life care facility at 615 Heath Street was subject to Board of Appeals decision Case #3397 (June 18, 1997), a modification of the relief granted in the decision under Sections 5.43 and 5.07 is required, i.e. the lot line setback and usable open space requirement. Although a modification of the setback relief was requested to be most conservative, Mr. Goldberg pointed out that the distance from the rear of the life care facility to the interior lot line abutting 1262 Boylston Street remained well in excess of the setback required under Case #3397 even after conveyance of the Easement strip. Usable open space would be reduced slightly from the 4.3%

allowed under Case #3397 to approximately 4.1%. Mr. Goldberg further explained that conformance to the FAR requirements will not be affected by the conveyance of the Easement strip because the allowed gross floor area of the life care facility is 110,000 square feet after the decrease in lot size, and the facility as allowed per the plans is 109,429 square feet.

No members of the public appeared to address the Board regarding the Petitioner's request to modify Case #3397.

Tim Greenhill, on behalf of the Planning Board, gave the following report:

At its March 23, 2006 meeting, the Planning Board voted unanimously to recommend approval of the modification request subject to the submittal of a current conditions plan for the 1262 Boylston Street parking lot, which the Petitioner provided.

Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner. He stated the various sections of the Zoning By-Law under which relief is needed. The Building Department has no objections to the petition.

The Board having deliberated on this matter and considered the foregoing testimony, concludes that it is desirable to grant the Petitioner's request to modify Case #3397, allowing for a slight reduction in setback and usable open space. The Board further finds that the proposed conveyance and modification of Case #3397 will not be more detrimental to the neighborhood than the existing conditions. The proposed conveyance and modification of Case #3397 will not have any effect on the traffic nor will it cause a nuisance or serious hazard to vehicles or pedestrians.

The Board further makes the following findings pursuant to Section 9.5:

1. The specific site is an appropriate location for the current uses.

2. The requested modification and conveyance will not adversely affect the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians from the proposed modification and conveyance.
4. The modification and conveyance as proposed will not have a significant adverse effect on the supply of housing available for low and moderate-income people.

Accordingly, the Board grants the Petitioner's request for modification of its decision in Case #3397 to allow for a slight reduction in the setback along the interior lot line between the life care parcel and the property located at 1262 Boylston Street, as well as a slight reduction in the usable open space from 4.3% to approximately 4.1%.

Unanimous Decision of
The Board of Appeals



Diane R. Gordon

276187.1.3129.3500

Filing Date: April 12, 2006

A True Copy:

ATTEST:



Patrick J. Ward
Board of Appeals