



BOARD OF APPEALS

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**TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 060053**

Petitioner, 464 Heath Street LLC applied for special permit granting relief from the applicable street width requirements to allow for a four-lot, single family subdivision of the property located at 464 Heath Street, Brookline.

On August 17, 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 September 21, 2006 at 7:45 p.m., as the time and place of a hearing on the request for special permit 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 August 31, 2006 and September 9, 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: 464 HEATH STREET LLC  
Location of Premises: 464 HEATH ST BRKL  
Date of Hearing: 09/21/2006  
Time of Hearing: 07:45 p.m.  
Place of Hearing: Selectmen's Hearing Room

A public hearing will be held for

**a variance and/or a special permit from Section 5.14; Special Permit Required**

Of the Zoning By-Law to subdivide lot into four single family residential lots

At 464 HEATH ST BRKL

Said Premise located in an S-10 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: 08/31/2006, and 09/07/2006**

At the time and place specified in the notice, this Board held a public hearing. Although the case was called, the Board heard no testimony and continued the case to Thursday, September 28, 2006 at 7:45. Present at the continued hearing were Board members Harry Miller, Enid Starr and Murray Shocket. Petitioner was represented at the hearing by Attorney Jeffrey P. Allen of Seegel, Lipshutz & Wilchins, P.C.

At the hearing, Polly Selkoe, Planner of the Planning Department, distributed the Planning Board Memorandum dated September 7, 2006. Mr. Allen then described the factual background for the petition as follows:

On June 7, 2006, the Petitioner submitted an ANR subdivision plan to subdivide the existing single-family residential lot into four single-family residential lots.

However, the Petitioner withdrew the ANR plan and applied for relief from the Board of Appeals because the frontage in some areas along Heath Street is less than 40 feet in width as required.

Mr. Allen explained that the property currently consists of a large, uneven wooded lot, on which there is an existing single family residence with a detached garage. The site is adjacent to the Baldwin School and the Soule Recreation Center and is split between two zoning districts, S-10 and S-25.

According to Town of Brookline Engineering Department Records, Heath Street is one of the oldest ways in Brookline and was originally laid out as part of Old Sherburn Road on June 8, 1658. The street was accepted on December 28, 1658. It was renamed Heath Street in 1841. From Dunster Road to the corner of the westerly property line, Heath Street measures 32 feet. From the westerly property line towards Carey Road and beyond to Woodland Road, the width increases to 40 feet. Heath Street measures 40 feet in width for approximately 60 feet of the property's frontage. The width of Heath Street in front of the Petitioner's property at no point measures less than 32 feet.

The Petitioner proposes to subdivide the existing parcel into four single-family residential lots pursuant to an ANR plan, dated June 7, 2006. Each of the four proposed lots conform to the minimum lot size requirements and the minimum frontage along Heath Street.

Mr. Allen explained that because the property fronts on Heath Street in an area that varies in width between 32 and 40 feet, the Petitioner requires a special permit from the Board of Appeals pursuant to § 5.14.

**Section 5.14 – Lot Frontage**

Every lot shall have a minimum frontage of not less than 25 feet in S and SC Districts, and of not less than 20 feet in other districts, upon a street not less than 40 feet in width; except that the Board of Appeals may grant a special permit for use of a lot which has the required frontage upon a street not less than 30 feet in width, provided such street had been opened or dedicated to public use prior to 1922 or has been approved by the Planning Board as part of a subdivision. Such frontage shall not be obstructed from vehicular access to the street by walls, fences or other barriers.

The Chairperson inquired if any members of the public wished to be heard in regard to the matter being heard by the Board. Several members of the public raised concerns regarding traffic, and issues relating to density, and urged the Board to not act on the proposal at this time, but rather to defer any decision in order to allow the neighbors further time to discuss the proposal with the Petitioner.

Polly Selkoe, on behalf of the Planning Board, gave the following report:

The Planning Board does not oppose this proposed subdivision on Heath Street if the existing curb cut is moved to provide safer access from this curvy road to the lot and if there is only one curb cut serving as a common driveway to any single family homes on this property. All of the lots will meet the minimum lot size and the frontage width requirements. Although Heath Street is not 40 feet wide in all sections, it is no less than 32 feet wide at any one point, and the Zoning By-Law specifically allows for a special permit for public streets not less than 30 feet wide. However, the Planning Board would strongly urge the applicant to retain this historical home by moving the house to one of the other lots. If this were done, the

Planning Board would look more favorably on recommending yard setback relief if necessary. Therefore, the Planning Board recommends approval of the plan of land by Verne T. Porter, dated June 7, 2005 subject to the conditions as set forth hereinafter.

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, although Mr. Hitchcock expressed reservations relating to documentation of the proposed subdivision.

Mr. Allen acknowledged that the Petitioner would have to come back before the Board for further approvals if the eventual proposal for building on the subdivided lots requires any special permits for example for set-backs or FAR, as all that they were requesting approval for at this time is the subdivision itself.

The Board having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant all zoning relief that is requested.

The Board considered whether the proposed subdivision along frontage less than 40 feet in width creates harmonious visual relationships with the surrounding community and the Board has determined that the relationship is, in general, harmonious. The Board further finds that granting relief from the street width requirements to permit the subdivision will not be more detrimental to the neighborhood than the existing conditions. The proposed design is adequate and appropriate for the neighborhood. The proposed subdivision along frontage with less than 40 feet and as conditioned by a single curb cut and common drive will not cause a nuisance or serious hazard to vehicles or pedestrians. The Board finds that the proposed use will not remove any existing low or moderate-income housing in the Town.

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

1. The location, topography, vicinity and natural features of the site make it suitable for the proposed subdivision.
2. The proposed subdivision is in harmony with the prevailing character of the neighborhood.
3. The specific site is appropriate for single-family residential lots of the size and character proposed.
4. Granting relief from the street width requirements to allow for the proposed subdivision will not adversely affect the neighborhood.
5. There will be no nuisance or serious hazard to vehicles or pedestrians from the use as proposed.
6. Granting relief from the street width requirements to allow for the proposed subdivision will not have a significant adverse effect on the supply of housing available for low and moderate-income people.

Accordingly, the Board grants a special permit pursuant to § 5.14 of the Zoning By-Laws, subject to the following conditions:

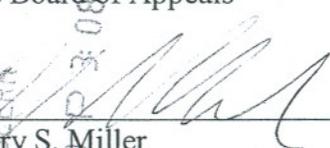
1. The existing main structure shall be preserved, although it may be relocated to another lot on the subject property, to the extent appropriate as determined by the Preservation Commission.
2. No more than four lots may be created from this property.
3. All lots shall be serviced by a common driveway with no more than one curb cut.

4. Any new construction on the main house or any new single family home shall be subject to design review by the Planning Board, including site plan, exterior lighting, and landscaping review.

5. A construction management plan shall be submitted for the review and approval of the Director of Engineering, with a copy of the approved plan submitted to the Planning and Community Development Department.

6. Prior to obtaining a demolition or building permit, the applicant shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals decision: a) a subdivision plan stamped by a registered engineer, and b) 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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Harry S. Miller

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Filing Date: November 30, 2006

A True Copy:  
ATTEST

  
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Patrick J. Ward  
Board of Appeals