



Town of Brookline

Massachusetts

BOARD OF APPEALS
Emid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert DeFries

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Patrick J. Ward, Clerk

**TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 090029**

Petitioners, David and Joanne Hults, applied to the Building Commissioner for permission to operate a family day care in their home at 29 University Road. The application was denied and an appeal was taken to this Board.

On 14 May 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 9 July 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 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 18 and 25 June 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:

Petitioners: HULTS TRS DAVID E & JOANNE

Location of Premises: **29 UNIVERSITYRD BRKL**
Date of Hearing: **07/09/2009**
Time of Hearing: **7:00 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th. floor**

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

Section 4.07, Use 15b; Special permit required of the Zoning By-Law to operate a family daycare in home at **29 UNIVERSITY ROAD BRKL.**

Said Premise located in a **M-1.0** (multi family) 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. Ms. Hults presented her case before the Board.

Background Information.

At the Fall 2008 Town Meeting, Warrant Article 14 was passed and subsequently approved by the Attorney General. Article 14 amended the Table of Use Regulations to include a new use, #15b, to allow large family day care homes for up to 10 children under the age of seven, or under the age of sixteen if there are children with special needs on site. Massachusetts General Law requires at least one approved assistant in large family home day cares. Use

#15b allows large family day care homes by right in L, G, O, and I Zoning Districts; by Special Permit in SC, T, F, and M Zoning Districts; and would prohibit them in an S Zoning District. The State of Massachusetts is currently reviewing the applicable day care regulations and it is anticipated there will be some changes to the laws; therefore the current amendment has a June 1, 2010 sunset date. It is expected a revised version of the amendment, consistent with the new State laws, will be passed at Town Meeting prior to the sunset date. Any Special Permits granted to large family day care homes prior to the sunset date will remain valid after the revised amendment is adopted.

Ms. Hults described her home at 29 University Road as a two-family dwelling located near the Beacon Street end of University Road. The building is three stories with a garden level basement. The basement is used for the pre-school day care, the first story is a rental residential unit, and Ms. Hults resides in the second and third floors with her family. The 29 University Road lot slopes upward from University Road, and there is a small accessory garage built into the grade that allows for the parking of two cars.

Ms. Hults, said that she has been operating her pre-school day care at this location for twenty seven years. The pre-school day care follows the school calendar and is closed on school holidays, vacation weeks, and for July and August. The pre-school day care operates, during the school year, Monday-Thursday from 8:30 a.m. to 12:30 p.m., with extended hours until 1:45 on Tuesday. Most of the children who attend the pre-school day care arrive on foot, but for those who are driven, Ms. Hults reserves one bay in the garage for parents to use for drop-off. There is additionally street parking available on one side of University Road. Ms. Hults reported that she has one employee who has been working in the pre-school for eight years and walks to work. Ms. Hults uses her rear yard for approximately one hour, once a

week as a play area but also uses local parks for childrens' outdoor activities. Her preschool day care serves nine children, some of whom have special needs.

Board Member Jonathan Book asked whether there had been any problems related to parking and, in particular, pick-up and/or drop off of children attending the day care. Ms. Hults responded that she had experienced no problems. Board Member Mark Zuroff asked about the number of children at the center. Ms. Hults responded that while she is licensed by the State for up to ten children, she has never had more than nine.

The Chairman asked whether anyone in the audience wished to speak in support of the application. Noone spoke in favor of the application. The Chairman acknowledged the receipt of many letters in support of the application from abutters and parents of children either currently attending or previously attending the day care, as well as a Town Meeting Member. The Chairman asked whether anyone in the audience wished to speak against the application. Noone spoke against the application.

Lara Curtis, Planner, reported the findings of the Planning Department:

Section 4.07 – Table of Use Regualations, Use # 15B

A special permit may be granted by the Board of Appeals to allow Large Family Daycare Homes as an accessory use for up to ten children.

Ms. Curtis reported that the Planning Board is supportive of this proposal to legalize the pre-school at 29 University Road. The daycare has been operating for 27 years without complaint, and while University Road on occasion does experience some congestion, the applicant does have adequate parking facilities for those children who arrive by car. In addition, the Planning Department has received correspondence from a number of abutters on University Road indicating their support for the continued operation of the pre-school at this

location. Therefore, she said, the Planning Board recommends approval of the Special Permit for the Large Family Daycare home for up to ten children as an accessory use.

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. He said that the petitioner has been extremely cooperative throughout the process. He said that there have been no complaints about the day care operation and stated that the Building Department supports the requested zoning relief. He suggested an additional condition relative to the recording of the decision should the requested relief be granted by the Board.

The Chairman asked whether any of the other Members of the Board had any further questions. Both members indicated that they would vote in favor of the application.

There being no further questions and the Board having deliberated on this matter and having considered the foregoing testimony, the Board concludes that the requirements of **Section 9.05** of the Zoning By-Law have been satisfied and it is desirable to grant a Special Permit in accordance with **Section 4.07 Use 15b** of the Zoning By-Law, operation of a large Family Daycare Home as an accessory use for up to ten children. The Board specifically makes the following findings pursuant to **Section 9.05** of the Zoning By-Law:

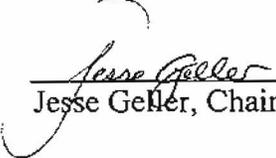
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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.

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

1. A parking diagram indicating the on-site parking benefitting the day care home with written narrative describing the pick-up and drop-off procedures shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. The petitioner shall submit to the Building Commissioner, proof of recording of the decision at the Norfolk County Registry of Deeds within forty five (45) days of this decision.

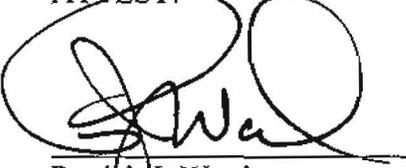
Unanimous Decision of
The Board of Appeals

Filing Date: 7/24/09



Jesse Geller, Chairman

A True Copy
ATTEST.



Patrick J. Ward
Clerk, Board of Appeals