



TOWN OF BROOKLINE

Massachusetts

BOARD OF APPEALS

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PATRICK J. WARD, Secretary

TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 060075

Petitioner, 464 Heath Street LLC applied to the Building Commissioner for permission to establish and maintain a common driveway for the shared use and mutual benefit of a four-lot subdivision located at 464 Heath Street per plans. The application was denied and an appeal was taken this Board.

On December 7, 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 January 11, 2007 at 7:15 p.m. in the Selectmen's Hearing Room on the sixth floor of the Town Hall as the time and place of a hearing on the request for special permit. 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 December 21, 2006 and December 28, 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: **01/11/2007**

Time of Hearing: **07:15 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6th floor**

A public hearing will be held for

a variance and/or a special permit from Section 6.04.5.e; Design of All Off-Street Parking Facilities; Special Permit Required

Of the Zoning By-Law to subdivide lot establish and maintain a common driveway for the shared use and mutual benefit of a four lot subdivision per plans

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: 12/21/2006, and 12/28/2006

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Board members Lawrence Kaplan, Enid Starr, and Bailey Silbert. Petitioner was represented at the hearing by Attorney Jeffrey P. Allen of Seegel, Lipshutz & Wilchins, P.C.

At the hearing, Adam Serafin, Planner of the Planning Department, distributed the Planning Board Memorandum dated January 4, 2007. 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. 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. In September 2006, the Board voted to approve with conditions the subdivision proposal requiring special permit relief.

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.

On August 8, 2006, the Preservation Commission issued a Stay of Demolition effective for up to one year. However, the Petitioner intends to preserve the existing house and move it to Lot 3 on the submitted plan.

Condition No. 3 attached to the Board of Appeals Decision to grant special permit relief for the subdivision's frontage (BOA Case No. 060053) specifies that "[a]ll lots shall be serviced by a common driveway with no more than one curb cut." To satisfy that

condition, the Petitioner proposes to create an access and utility easement fifty feet (50') wide beginning at Heath Street and extending toward the rear lots approximately 156 feet. Within this access easement, the applicant will construct a twenty-foot wide common driveway, ending in a cul-de-sac with a twenty-five foot (25') radius.

FINDINGS

Section 6.04.5.e – Design of All Off-Street Parking Facilities

In all districts, the Board of Appeals may by special permit authorize owners of adjoining properties to establish common driveways under mutual easements provided that any such special permit shall not become effective until the easement has been recorded.

The Chairperson inquired if any members of the public wished to be heard in regard to the matter being heard by the Board. Members of the public, including Dorothy Edinburg, Jon Rotenberg and Robert Cohen, urged the Board to not act on the proposal at this time, but rather to defer any decision in order to give time for the abutter to meet with the developer to review plans for the proposed houses to be built on the lots, and to see if the developer would reconsider its plans to relocate the existing house.

Adam Serafin, on behalf of the Planning Board, gave the following report:

The Planning Board supports this proposed common driveway to serve the four-lot subdivision on Heath Street. The common driveway would be located further away from the nearest curve in the road than the current driveway, providing safer access to the lots. Additionally, the common driveway would prevent the need for four access drives along Heath Street. It is located appropriately to provide sufficient access to all four lots, and is of an adequate width for two-way vehicular use. The driveway should not be used for parking in order to ensure access to all of the lots is adequate and not blocked.

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, and noted that all lots will meet the minimum lot size requirement. The

Building Department has no objections to the petition, because it believes one driveway is safer.

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 sympathizes with the neighbors' concern but feels that those concerns can be protected by appropriate conditions as opposed to continuing the hearing on the common driveway.

The Board considered whether the proposed common driveway for the four-lot subdivision 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 to establish and maintain a common driveway will not be more detrimental to the neighborhood than the existing conditions. The proposed design is adequate and appropriate for the neighborhood. The proposed common driveway will not cause a nuisance or serious hazard to vehicles or pedestrians, but rather, will result in the curb cut being moved further away from the nearest curve in the road than the current driveway, providing safer access to the lots. 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 common driveway.
2. The proposed common driveway is in harmony with the prevailing character of the neighborhood.

3. The specific site is appropriate for a common driveway to be established and maintained to service the proposed four-lot, single-family residential subdivision.

4. Granting relief to allow the Petitioner to establish and maintain a common driveway 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 to allow the Petitioner to establish and maintain a common driveway 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 § 6.04.5.e of the Zoning By-Laws, subject to the following conditions:

1. The existing driveway and curb cut serving the lot must be removed.

2. The Petitioner shall record the mutual easements for the common driveway at the Registry of Deeds prior to issuance of a building permit for the driveway. The easements shall be recorded in order for the special permit to become effective.

3. No parking shall be permitted on the common driveway.

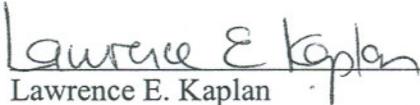
4. Prior to obtaining a building permit, the Petitioner shall submit to the Zoning Administrator for review and approval for conformance to the Board of Appeals Decision: a) a final site plan, stamped and signed by a registered engineer or land surveyor, indicating site grading and driveway materials, and b) evidence that the Board of Appeals decision and mutual easements have been recorded at the Registry of Deeds.

5. To the extent possible, the Petitioner shall take all reasonable steps to preserve the existing stone wall.

6. The Petitioner shall hold a neighborhood meeting prior to submission of plans to the Planning Board seeking design review approval relating to the new single family homes.

7. All conditions in the previous Board decision approving the 4 lot subdivision shall apply equally to this decision.

Unanimous Decision of
The Board of Appeals


Lawrence E. Kaplan
Chairman

299685.1.314209.3500

Filing Date: February 01, 2007

A True Copy:
ATTEST:


Patrick J. Ward
Board of Appeals