



Town of Brookline

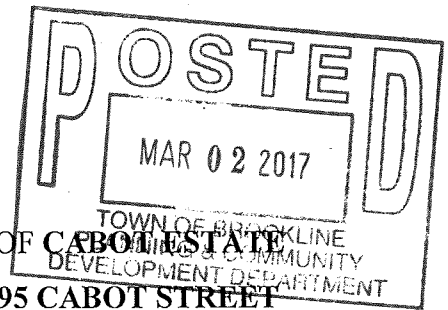
Massachusetts

Board of Appeals
Jesse Geller, Chairman

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

NOTICE OF DECISION

A public hearing was held on **February 16, 2017** on the appeal of **CABOT ESTATE DEV. C/O CINDY STUMPO** for a variance and/or special permit at **195 CABOT STREET** **TO CONSTRUCT A NEW SINGLE FAMILY DWELLING**. Said property is located in a S-40 (Single-Family) Residence District.



The appeal was **GRANTED WITH CONDITIONS**.

This decision of the Board of Appeals is on file in the Office of the Town Clerk and a copy is posted on the Town of Brookline's website at www.brooklinema.gov.

Decisions of the Board of Appeals become final in twenty (20) days, after the decision has been filed with the Office of the Town Clerk, unless within that time an aggrieved person appeals to Norfolk Superior Court or Massachusetts Land Court pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and so notifies the Town Clerk by serving a copy of the complaint within said twenty (20) days.

The date of filing for this decision is **March 2, 2017**

For questions regarding this filing, contact the Planning Department 617-730-2130



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Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0087
CABOT ESTATE, LLC
195 CABOT STREET, BROOKLINE, MA

Petitioner, Cabot Estate, LLC c/o Cindy Stumpo, applied to the Building Commissioner for permission to construct a new single-family home. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed February 16, 2017 in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, to their 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 February 2, 2017 & February 9, 2017 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. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at: 195 Cabot Street to *Construct a new single family dwelling S-40 (Single-Family) Residence District*, on February 16, 2017 at 7:30 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Cabot Estate Dev. c/o Cindy Stumpo) *Precinct 14*.

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

1. Section 5.09.2. n: Design Review

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

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 Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at llgellineau@brooklinema.gov

Jesse Geller, Chair

Christopher Hussey

Jonathan Book

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Mark G. Zuroff and Board Members Steve Chiumenti and Lark Palermo. Building Commissioner, Michael Yanovitch and Zoning Coordinator, Ashley Clark were also present at the hearing. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Representative for the Petitioner, Cindy Stumpo, was also present, along with project engineer, Verne Porter, VTP Associates, 132 Adams Street # 3, Newton, MA 02458.

Chairman Zuroff called the hearing to order at 7:30 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the property is located in the S-40, Single-Family District. Attorney Allen stated that the Preservation Commission staff determined the existing house

historically and/or architecturally significant and imposed a one year demolition delay through October 13, 2016.

Attorney Allen stated that the Petitioner seeks relief from Section 5.09.2.n of the Zoning Bylaw, to construct a new home, whereby the board may set limitations on what space may be counted toward FAR in the future.

Attorney Allen stated that the subject property is located at the end of a cul-de-sac with nearly 50 foot setbacks from both Cabot Street at the front yard and Heath Street at the rear yard. Attorney Allen provided a contrast between the existing home and the proposed home. He stated that the proposed home is situated in a similar location as the existing home. Attorney Allen stated that the existing structure is 106'-6" in length and the proposed home is 91'-6" in length. Attorney Allen stated that the footprint of the proposed home is 156 square feet greater than the existing home.

Attorney Allen argued that the scale of the proposed home is in keeping with a number of homes in the neighborhood based on side lot coverage and FAR. Attorney Allen indicated that Cabot Street neighboring streets include Heath Street, Lyman Road, Yarmouth Road, and Singletree Road. Attorney Allen stated that a number of homes in the area are newly built or have added substantial additions. Mr. Allen indicated that while the home is situated at the end of a cul- de-sac and setback significantly, minimizing its visibility, the design and size of the proposed home maintains consistency with homes in the neighborhood. Attorney Allen submitted photographs of neighboring homes.

Mr. Allen then discussed the most relevant sections of the design review standards stating the following:

- a. Preservation of Trees and Landscape – There are a number of larger trees at the point of the property nearest to Heath Street that will be preserved to buffer vehicular noise. A

small 8inch caliber tree will be lost. The Petitioner is working with a landscape architect to save as much perimeter landscaping as is worth saving and new landscaping will be added with the final plan be submitted to the Assistant Director of Regulatory Planning.

b. Relation of Buildings to Environment – The proposal is a story and a half taller than the existing house. Being at the end of a cul-de-sac on a street with a mixture of housing sizes and styles, it will fit in with the neighborhood.

c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The proposed addition conforms to all setback requirements. The proposed home is setback further from the front yard than the existing house, and its front façade is about the same length as the house it is replacing.

Attorney Allen stated that under Section 5.09.2.n. of the Zoning By-Law, in granting any such special permit, the Board of Appeals, in addition to the requirements of Sections 5.09, 9.03 and 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood.

Attorney Allen then discussed special permit relief under Section 9.05 of the Zoning By-Law arguing: (1) the specific site is an appropriate location for such use because the proposed home complies with set-back and height requirements of the By-law and the proposed scale, height, setbacks, architecture and massing of the structure are similar to other single-family structures in this neighborhood; (2) the proposed use will not adversely affect the neighborhood because the property fronts a cul-de-sac which directly abuts the S-25 District. The home is setback significantly from the front yard and is actually consistent with the placement of the existing home; (3) there will be no nuisance or serious hazard to vehicles or pedestrians as the proposed parking will utilize the existing drive opening; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) there will be no effect on the supply of housing available for low and moderate income people.

Attorney Allen stated that the clear intention of Section 5.09.2.n is to account for all space within a structure. Attorney Allen stated that the clear meaning and application of Section 5.09.2.n does not invalidate Section 5.22 and the discretion of a Board to grant a special permit up to 130% of the allowed FAR at the expiration of the 10 year wait period. Attorney Allen stated that the Planning Department devised Condition #2 which preserves the application of Section 5.22.

Chairman Zuroff asked whether anyone would like to speak in favor of, or in opposition to the proposal. There was no public comment.

Ms. Clark then delivered the findings for the Planning Board:

FINDINGS

Section 5.09.4 – Design Standards

The most relevant sections of the design review standards are described below:

- a. Preservation of Trees and Landscape – No information was provided about the necessity for removal of trees but new landscaping should be required as a condition of approval.
- b. Relation of Buildings to Environment – The proposal is a story and a half taller from the existing house. Being at the end of a cul-de-sac on a street with a mixture of housing sizes and styles, it should fit in with the neighborhood.
- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The proposed addition conforms to all setback requirements. It is setback further from the street than the existing home and its front façade is about the same length as the house it is replacing.

Section 5.09.2. n

n. any construction of newly created space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not

substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. **In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant's representation of the intended amount of future conversion.**

Section 5.22.3.b.1.b – Exceptions to Maximum Floor Area Ratio (FAR)

Floor Area	Allowed	Proposed	Allowed by Special Permit After 10 years	Finding
Floor Area Ratio (% of allowed)	.15 (100%)	.149 w/o attic/bsmt .19 (126%) <i>with attic/bsmt.</i>	.195 (130%)	Special Permit/ Variance
Floor Area (s.f.)	6,142	6,083 w/o attic/bsmt 7,779 <i>with attic/bsmt.</i>	7,984 (130%)	

Ms. Clark stated that the Planning Board is supportive of the proposed new house. She stated that the Planning Board indicated that although the proposed home is large, it is at the end of a cul-de-sac and set back over 50' from Cabot Street and 45' from Heath Street. The Planning Board noted that there is a great variation in the sizes and styles of the other houses in the neighborhood. Therefore, the Planning Board recommends approval of the site plan by Verne Porter, Land Surveyor, dated 11/4/16, and the architectural plans by Apkarian Architects, dated 11/8/2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final site plans, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. The extent to which any non-habitable space may be converted to habitable space in the future, in addition to other relevant By-law sections, must comply with §5.22 of the Zoning By-law.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, showing heights and design of any retaining walls, subject to the review and approval of the Assistant Director of Regulatory Planning.
4. 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 floor plans and elevations stamped and signed by a registered architect or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff then called upon Mr. Yanovitch on behalf of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to the requested relief. He stated that the Planning Board considers the overall neighborhood and density when reviewing applications under Section 5.09.2.n. Mr. Yanovitch stated that if the zoning changes to Section 5.09.2 approved by Fall 2016 Town Meeting are upheld by the Attorney General, any newly constructed space, such as a new house, would need to count all floor space in the house, including basement and attic space toward the allowable floor area, if 1) the space satisfies the State Building code as habitable space, and/or 2) could be converted to habitable space with the addition of window or doors. Mr. Yanovitch stated that the Planning Board Condition #2, will set the limitation such that any home that seeks a special permit after 10 years is reviewable under Section 5.22 of the Zoning By-Law.

Mr. Zuroff, opined that the Condition #2 should contain language referencing FAR generally as to address the potential nonexistence of Section 5.22 in the future. Board Member Chiumenti agreed.

The Board then determined, by unanimous vote that the requirements for a special permit under Section 5.09.2.n of the Zoning By-Law pursuant to Section 9.05 of the Zoning By-Law were met. The Board made the following specific findings pursuant to said Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no 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. Development will not have any effect on the supply of housing available for low and moderate income people.

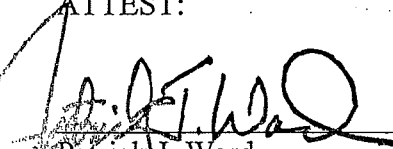
Accordingly, the Board voted unanimously to grant the requested relief subject to the following revised conditions:

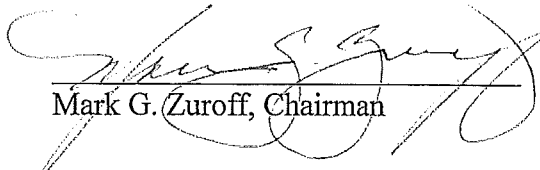
1. Prior to the issuance of a building permit, the applicant shall submit final site plans, floor plans and elevations, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Pursuant to the relief of a special permit under Section 5.09.2.n and to the extent to which any non-habitable space may be converted to habitable space in the future, in addition to other relevant By-law sections, the structure must comply with §5.22, as may be amended or replaced, of the Zoning By-law.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, showing heights and design of any retaining walls, subject to the review and approval of the Assistant Director of Regulatory Planning.
4. 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 floor plans and elevations stamped and signed by a registered architect or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

Filing Date: 3/2/2017
A True Copy

ATTEST:


Patrick J. Ward
Clerk, Board of Appeals


Mark G. Zuroff, Chairman