



# Town of Brookline Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Mark Zurroff  
Christopher Hussey

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

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2018-0019  
DJL DEVELOPMENT DUDLEY, LLC  
21 SEARS ROAD, BROOKLINE, MA

Petitioner, DJL DEVELOPMENT DUDLEY LLC, applied to the Building Commissioner for permission to construct a single family home at 21 Sears Road (Lot 18). The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed June 28, 2018 at 7:05 PM., 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 Petitioners, 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 June 14, 2018 and June 21, 2018 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:

**21 SEARS ROAD, BROOKLINE, MA 02445 - CONSTRUCT SINGLE FAMILY HOME LOT 18 in a(n) S-40 SINGLE-FAMILY on 06/29/2018 at 7:05 PM in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Cindy Stumpo) Precinct 15**

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:

**§5.09.2.N – DESIGN REVIEW**

**§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**

**§5.55 - FRONT YARD FOR REAR LOT**

**Any additional relief the Board may find necessary.**

*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](http://www.brooklinema.gov).*

*The Town of Brookline does not discriminate in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer.*

*If you have any questions regarding this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at [chaynes@brooklinema.gov](mailto:chaynes@brooklinema.gov).*

*Jesse Geller, Chair  
Christopher Hussey  
Mark Zuroff*

**Publish: 06/14/2018 & 06/21/2018**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairperson Johanna Schneider and Board Members Randolph Meiklejohn and Christopher Hussey. Also present at the hearing were Zoning Planner & Coordinator, Ashley Clark and Deputy Building Commissioner, Michael Yanovitch.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445.

Chairperson Schneider called the hearing to order at 7:05 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then described the proposal, stating that the Petitioner proposes to construct a new two and a half story single-family home with a three car garage and a total finished gross floor area of 7,776 s.f. and an FAR of .149. He noted that in 2013 the Planning Board endorsed an ANR Subdivision Plan that created six lots on Sears Road. He added that in 2015 a special permit was issued to create a common driveway for 21-29 Sears Road. Attorney Allen explained that the attic space does not exceed 6 feet, 4 inches and therefore would require substantial construction to raise the roof to the minimum 7 feet required by building code to be considered habitable space. He added that the basement space of 3,729 s.f. is not proposed to be finished with the proposal, but if it were to be finished in the future it would be in accordance with the zoning by-law and the FAR would be .22. He added that the landscape architect met with neighbors from Lee Street to create a landscaping plan with adequate screening. Attorney Allen noted that the Petitioner went to the Planning Board twice, and that at the second meeting the Planning Board unanimously approved these plans.

Attorney Allen then stated that the Petitioner seeks a special permit for relief from **Section 5.09.2.N** for potentially convertible basement space, pursuant to **Section 5.09.4** design standards and **Section 9.05**.

Attorney Allen described the standards under **Section 9.05** of the Zoning By-Law stating: the location is appropriate for the proposed single-family dwelling; the use will not adversely affect the neighborhood because the home will be of a comparable size and style as other dwellings in the immediate neighborhood; there will be no nuisance or serious hazard to vehicles or pedestrians because

no vehicles will be backing out onto Sears Road and the previously approved common driveway arrangement will not be modified; adequate and appropriate facilities will be provided for the proper operation of a single-family dwelling; and there will be no effect on the supply on housing available for low and moderate income people.

Chairperson Schneider then asked whether anyone was present to speak in favor of the proposal. Ken Goldstein, Goldstein and Herndon, spoke on behalf of his client, the owner of Lots 16, 17 and 19 of the subdivision. Attorney Goldstein requested that final landscape plans be available for review.

Chairperson Schneider then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Chairperson Schneider then called upon Ashley Clark, Zoning Planner & Coordinator, to deliver the findings of the Planning Board. Ms. Clark noted the following:

## **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 – The proposed landscape plan maintains many of the existing mature trees on the site, however, some trees will be removed to accommodate the new home, driveway and utilities. The landscape plan proposes the addition of indigenous flowering trees and lawn.
- b. Relation of Buildings to Environment – The proposed home is setback far from the street and meets setback and height requirements. The landscaping proposed will complement the existing informal trees.
- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The scale of the home is consistent with other homes in the immediate neighborhood and with new homes proposed within the same subdivision. It will be screened from the street and abutters, similar to other homes in the surrounding neighborhood.

### **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.**

<b>Floor Area</b>	<b>Allowed</b>	<b>Proposed</b>	<b>Finding</b>
Floor Area Ratio (% of allowed)	.15 (100%)	.149 w/o basement	Special Permit
Floor Area (s.f.)	7,810	7,776 w/o basement 11,505 <i>with basement</i>	

**PLANNING BOARD RECOMMENDATION**

The Planning Board was pleased to see the additional materials provided by the applicant including a revised landscape plan that had been approved by the abutters and a site plan showing the relationship of the subdivided lots to one another. The Board asked the applicant to add the property lines onto the landscaping plan, show more information about any proposed fences on the plan and consult with the owner of Lot 17 regarding a proposed fence.

**Therefore, the Planning Board recommends approval of the site plan by Verne Porter, Land Surveyor, dated 2/1/2018 and architectural floor plans by McKay Architects, dated 2/25/2018 and elevations dated 11/27/2018 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 regulated FAR, 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.

Chairperson Schneider then called upon Michael Yanovitch to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department has no opposition to this request and, should relief be granted, the Building Department will work with the Petitioner to ensure compliance with the Building Code.

In reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for a special permit from Section 5.09.2.N for potentially convertible basement space, pursuant to Section 5.09.4 design standards and Section 9.05 of the Zoning By-Law, respectively, were met, finding specifically under 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 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. Development will have no effect on the supply of housing available for low and moderate income people.

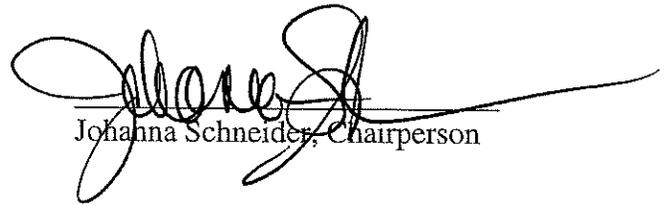
Accordingly, the Board voted unanimously to grant the requested special permit relief subject to the following conditions:

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.

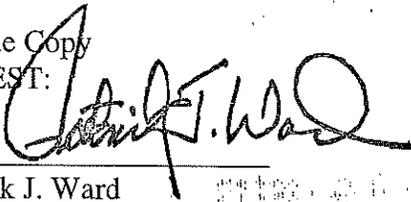
2. The extent to which any non-habitable space may be converted to habitable space in the future, in addition to other relevant By-law sections regulated FAR, must comply with §5.22 of the Zoning By-law.
3. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan, 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.

Unanimous Decision of  
The Board of Appeals

Filing Date: 7/11/2018

  
Johanna Schneider, Chairperson

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals