



# Town of Brookline Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2018-0088  
8 SINGLETREE ROAD

Cindy R. Stumpo, as general contractor, applied to the Building Commissioner for a building permit to construct a single-family home at 8 Singletree Road (a/k/a 305 Heath Street, a/k/a 123 Cabot Street). The application was denied and an appeal was taken to this Board by the owner of record, 123 Cabot Street, LLC, and by the applicant, Hiren Mankodi, who will be purchasing the property for his family home.

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 February 14, 2019 at 7:00 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for appeal. Notice of the hearing was mailed to the Petitioner, to the attorney 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 January 31, 2019 and February 7, 2019 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:

**305 HEATH STREET AKA 8 SINGLETREE ROAD, BROOKLINE, MA 02467 - Build single family home at 123 Cabot St. in a(n) S-40 SINGLE-FAMILY on February 14, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: Cindy R 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**

**§5.30 - MAXIMUM HEIGHT OF BUILDINGS**

**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  
Mark Zuroff**

On February 14, 2019, the time and place specified in the notice, this Board held a public hearing. At the hearing on February 14, 2019, at the request of the Petitioners, the hearing was continued to April 4, 2019 in order to allow the Petitioner to return to the Planning Board. On April 4, 2019, at the time and place specified in the notice, this Board held a public hearing, continued from February 14, 2019.

Present at the hearing on April 4, 2019 was Chairman Jesse Geller, and Board Members Kate Poverman and Randolph Meiklejohn. The case was presented by Attorney Kenneth M. Goldstein, 822 Boylston St., Suite 300, Chestnut Hill, Massachusetts 02467 along with the

project architect, Paul Apkarian, and the project engineer, Verne Porter. Chairman Jesse Geller called the hearing to order at 7:00 p.m.

Attorney Goldstein waived the reading of public notice and presented to the Board a background of the property, stating as follows: 8 Singletree Road (a/k/a 305 Heath Street, a/k/a 123 Cabot Street) is an undeveloped lot fronting Singletree Road, Heath Street and Cabot Street. There is a grade difference of approximately thirty feet between the Singletree Road and Heath Street frontages. The only abutting lot is undeveloped and is at a higher grade. A thirty-foot wide conservation restriction runs along the Heath Street frontage but does not affect the remainder of the lot. The property is in an S-40 Zone with an FAR of 0.15 and a maximum height for structures of thirty-five feet.

The petitioner plans to construct a single-family home on the site. The building permit denial letter cited the need for a Special Permit under §5.09.2.n of the Zoning Bylaw which calls for design review when unfinished space could result in a structure exceeding the allowable FAR if the unfinished space were later to be finished and made a habitable.

The denial letter also cited the application for non-conformance with §5.30 of the Zoning Bylaw, the section providing for the maximum allowable height of structures. Attorney Goldstein explained that the Building Commission had included this citation in the denial letter because, at the time of the plans submission to the Building Department, the plans were missing information needed for calculating mean grades. The omissions have since been rectified.

Chairman Jesse Geller confirmed with Deputy Building Commissioner Joseph Braga, Jr. and with Planner Karen Martin that the proposed project conforms to height restrictions based on the plans presented and there was no need for relief under § 5.30 of the Zoning Bylaw.

Attorney Goldstein related to the Board that the application had been reviewed twice by the Planning Board. As a result of the Planning Board's input, the amount of unfinished space which could be made habitable was reduced. Approximately four hundred square feet of gross floor area was eliminated from the plan, the length of the house was reduced by four and one-half feet and the depth of the house was reduced by two feet. Also, the orientation of the house was adjusted to better assimilate to the topography of the lot.

Architect Paul Apkarian and Engineer Verne Porter presented the plan to the Board.

Board Member Kate Poverman asked about the discrepancy between the notation on the Page A.1.0 of the Plan that "Future FAR %" is .26 and the notation in the Planning Board report showing that the proposed Floor Area Ratio (with basement) is .19. Upon discussion between Board Members, Mr. Apkarian and staff it was clarified that the .26 ratio from the plan represented the additional ratio that would result if all unfinished space were made habitable and that the .19 ratio from the Planning Board Report represented the maximum allowable additional square footage that would be permitted applying the 130% maximum available by Special Permit under §5.22.3.b.

Board Member Randolph Meiklejohn asked about the potential to complete the attic space. Mr. Apkarian explained that the floor joists, support columns and access were designed in a manner that would make the completion of the attic into habitable space impractical. Board Member Randolph Meiklejohn also asked about the 'hatched' area shown on the basement plan and whether there was any structural difference between this area and the remainder of the basement. Mr. Apkarian explained that the hatched areas shown on the plan represented an area that could legally be finished in the future but that, other than its use for mechanical systems, the unhatched area was not structurally different than the hatched area.

Attorney Goldstein next discussed the zoning relief required from the Board of Appeals as follows:

Attorney Goldstein stated that, under §5.09.2.n, all of the criteria for granting the Special Permit have been met. The massing scale, footprint and height of the structure are not substantially greater than other structures in the neighborhood. Attorney Goldstein presented a spreadsheet comparison and photographs of the nearest properties located at 9 Singletree Road, 35 Singletree Road, 120 Cabot Street and 130 Street. At the request of Board Member Randolph Meiklejohn, Attorney Goldstein also presented a plan (taken from the Town atlas) showing the subject lots, the comparison lots and the footprints of the structures as built. The comparison, photographs and plan were used to show that the proposed structure at 8 Singletree Road matches the massing, scale, footprint and height of the comparison properties and that, unlike the proposed structure, three of the four comparison properties exceed the maximum finished floor area by a substantial amount.

Chairman Jesse Geller asked Attorney Goldstein how setbacks of the proposed structure compared with neighboring structures complying with the Bylaw. Attorney Goldstein pointed out that the proposed structure complies with all setback regulations and that, as evidenced by the plan presented, the setbacks of the proposed structure are not substantially less than the comparison properties. Chairman Jesse Geller then asked Attorney Goldstein whether the applicant had any intention of ever completing the attic. Attorney Goldstein responded the applicant had no such intention and that, as explained by Mr. Apkarian, completion of the attic into habitable space would be impractical.

The general criteria for approval of Special Permits are provided in § 9.05. Mr. Goldstein stated that the proposal is an appropriate location for the structure; will not adversely affect the

neighborhood, and presents no nuisance to passage; adequate facilities have been provided for the proper operation of the property; and the proposal has not adverse impact on affordable housing.

Chairman Jesse Geller asked if there was anyone present who wished to speak in favor of the application. No one spoke in favor of the application.

Chairman Jesse Geller asked if there was anyone present who wished to speak in opposition to this application. No one spoke in opposition to the application.

Chairman Jesse Geller asked if the Board had any questions. The Board Members asked only clarifying questions and expressed general support for the application.

Chairman Jesse Geller called upon Karen Martin, Planner, to deliver the findings of the Planning Board. Ms. Martin presented the following:

## **FINDINGS**

### **Section 5.09.2.n – Design Standards**

The most relevant sections of the design review standards are described in the impact statement provided by the applicant and attached at the rear of this report.

### **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.**

Floor Area	Allowed	Proposed	Finding
Floor Area Ratio (% of allowed)	.15 (100%)	Without basement: .15 (100%) With basement: .19 (127%)	Special Permit
Floor Area (s.f.)	6,000	Without basement: 5,993 With basement: 7,800	

**Section 5.30 – Maximum Height of Buildings**

	Allowed/Required	Proposed	Finding
Maximum Height	35 feet	34.85 feet **	Complies**

\*\* The Deputy Building Commissioner and the applicant have not agreed on the interpretation of how to measure the height of this structure.

**PLANNING BOARD COMMENTS**

After making revisions based on the Board’s initial feedback that reduced the amount of space that can be finished in the future and shifted the position of the house on the site, the Planning Board felt the proposal had improved and recommended approval.

Therefore, the Planning Board recommends approval of the site plan by Verne Porter dated 2/14/19 and floor plans and elevations by Paul Apkarian Architects, Inc. dated 4/4/2019 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 regulating 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, 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: a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final floor plans and elevations stamped and signed by a registered architect or engineer; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Deputy Building Commissioner, Joseph Braga, Jr., to deliver the comments of the Building Department. Mr. Braga expressed that the Building Department has no objections to the application.

The Board of Appeals then determined by unanimous vote that the requirements for a Special Permit under § 5.09.2.n and § 9.05 had been satisfied and granted the requested Special Permit. The Board made the following specific findings pursuant to said § 9.05:

- a. The specific site in 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.

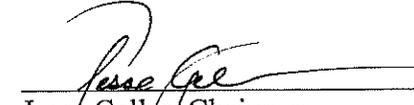
Accordingly, the Board of Appeals voted unanimously to grant the requested relief subject to the following conditions:

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 regulating 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, 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: a) a final site plan stamped and signed by a registered engineer or land surveyor; b) final floor plans and elevations stamped and signed by a registered architect or engineer; and c) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

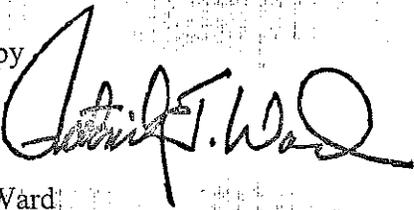
Unanimous Decision of  
The Board of Appeals

Filing Date: 05/02/19

  
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Jesse Geller, Chairman

A True Copy

ATTEST:

  
Patrick J. Ward

Clerk, Board of Appeals