



**BOARD OF APPEALS**  
Jesse Geller, Chairperson  
Mark Zurroff  
Johanna Schneider

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# *Town of Brookline*

## *Massachusetts*

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
**CASE NO. 2021-0050**  
LCB BERKSHIRE SENIOR LIVING HOLDINGS III, LLC  
615 HEATH STREET, BROOKLINE, MA

Petitioner, LCB Berkshire Senior Living Holdings III, LLC (“LCB” or the “Petitioner”), applied to the Building Commissioner for permission to modify prior Zoning Board of Appeals (the “ZBA” or the “Board”) Decisions to convert the existing skilled nursing wing into memory support and assisted living units in a G-2.0 General Business Zoning District. 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 September 9, 2021, at 7:00 pm, virtually 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 August 26, 2021 & September 2, 2021, 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 on the following petition:

Address: 615 Heath Street  
Petitioner: LCB Berkshire Senior Living Holdings III, LLC  
Zoning District: G-2.0 (General Business)  
Precinct: 15  
Description: Modification of previous ZBA Decisions to allow for the addition of memory and assisted living units

Date, time, and location of the public hearing are as follows:

Date: 09/09/2021  
Time: 7:00 pm  
Location: Virtual Meeting (see below)

Register for this virtual hearing:

<https://bit.ly/3AXX9xz>

After registering you will receive a confirmation email containing information about joining the hearing.

Our Virtual Meeting Guide for Applicants and the Public can be found here:

<https://bit.ly/30wRoY3>

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:

#### §4.08 - AFFORDABLE HOUSING REQUIREMENTS

##### ***QUESTIONS, PUBLIC COMMENT FILES, PDFs OR PRESENTATIONS:***

*Advanced submissions of files and presentations are strongly encouraged. In an effort to ensure the Board has adequate time to review materials we ask that any additional documents such as written comment letters, photos, files, or presentations or questions be sent before the hearing to Karen Chavez ([kchavez@brooklinema.gov](mailto:kchavez@brooklinema.gov)).*

*All plans and submissions may be found at: <https://aca-prod.accela.com/Brookline/Default.aspx>. An account is **NOT REQUIRED** to access materials. Public testimony will be taken during the hearing as normal.*

*Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters by mail or in the papers. Questions about hearing schedules may be directed to the Planning and Community Development Department at [vpanak@brooklinema.gov](mailto:vpanak@brooklinema.gov), 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 Assistive Listening Devices, please contact Caitlin Haynes at 617-730-2345 or at [chaynes@brooklinema.gov](mailto:chaynes@brooklinema.gov).*

*Jesse Geller, Chair  
Mark Zuroff  
Johanna Schneider*

**Publish: 08/26/2021 & 09/02/2021**

At the time and place specified in the notice, the Town of Brookline Zoning Board of Appeals held a virtual public hearing. Present at the hearing were Chair Jesse Geller and Board Members Mark Zuroff and Randolph Meiklejohn. Also present at the hearing was Deputy Building Commissioner, Paul Campbell and Zoning Coordinator and Planner, Karen Chavez.

The Petitioner's attorney, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts 02445, waived a reading of the public hearing notice for the record. Also in attendance were representatives for the Petitioner: Lee Bloom, Ed SanClemente, and Ted Doyle. Also in attendance were the project architect, Scott Hall, housing consultant Margaret Murphy, and traffic consultant Erin Fredette, McMahon Associates.

Attorney Allen provided the background for the project. He stated that in 1997, by decision #3397, the ZBA granted specific relief to allow for the construction of a life care facility with 51 assisted living units and 135 beds of nursing care, an underground parking garage for 79 cars at 615 Heath Street, and 52 spaces in a structured parking garage on the west side of Tully Street. Attorney Allen noted that the Planning Board was unanimously supportive, and the

project went through an involved neighborhood process and a DAT. He said that a 30-year annual cash payment was agreed to for the affordable housing requirement.

Attorney Allen stated that in 1998 by decision #3397A, the ZBA granted a modification of the prior decision to extend the underground parking garage for ten additional parking spaces (a total of 89) and an agreement to lease 42 parking spaces from 200 Boylston Street. The Board's decision reduced living units from 51 to 48. Attorney Allen stated that in this decision, the Board substituted a new condition #4 to require 89 parking spaces in the underground parking garage and required a nearby lease for 42 parking spaces and a shuttle for employees.

Attorney Allen then stated that as there is no significant exterior modification proposed to the building and the modification request relates to the change in use. He noted that the request came directly to the ZBA as determined by the Building Commissioner and Assistant Director of Regulatory Planning. To ensure an adequate public process, Attorney Allen noted that there was outreach to abutters, and Town Meeting Members, and the Petitioner organized a Zoom call to answer any questions or concerns. He stated that no abutters voiced any concerns.

Attorney Allen stated that the request is to modify ZBA decisions, #3391 and #3391A. He said that LCB Senior Living is in the process of purchasing the property, and as a result of this purchase, certain renovations are proposed to transform the existing skilled nursing wing into memory support and assisted living apartments. Attorney Allen continued that there are currently 78 skilled nursing units and 48 assisted living apartments. He noted that the renovations would convert 135 nursing beds into 33 new assisted living apartments, and a portion of the existing skilled nursing commons will be converted into 18 memory support apartments. In addition, he noted, the remainder of the first floor in both wings will be renovated into memory support and assisted living commons. In summary, Mr. Allen stated that the

building would go from 135 nursing beds and 48 assisted living units to a total of 99 units: 18 memory support units and 81 assisted living units (a decrease by approximately 78 total beds). He stated that the 89 existing parking spaces located under the building would remain without additional parking elsewhere.

Mr. Allen stated that the impact of this mainly interior conversion with minor changes to the exterior will be minimal and will support the Town's affordable housing goals.

Upon inquiry from Chair Geller, Mr. Doyle described the difference in care for nursing beds and assisted living units. He stated that assisted living units are private apartments where residents can use nonmedical services. Mr. Doyle noted that these services include activities required of daily living, such as assistance with buttons and medication reminders, as needed. He pointed out that memory care services are more intensive and described the different security measures to keep residents safe. Mr. Doyle stated that the Proposal is that all services will be nonmedical and noted that skilled nursing requires a higher care ratio than the proposed assisted living and memory units require.

Attorney Allen noted that a parking ratio of .6 is the average for LCB's other buildings that provide similar services and the existing 89 parking spaces for the 99 units would exceed this ratio.

Mr. SanClemente then reviewed the project and the floor plans stating that most of the work is interior and will be mainly on the nursing wing of the building. He then described the proposed vestibule within the interior footprint of the building that will allow one point of entry to make for a more secured and monitored entrance.

Ms. Murphy updated the Board on the work done with the Senior Planner and the Housing Advisory Board Chair. She noted that the HAB would review the affordable housing component at their September 2021 meeting.

The Board reviewed the parking requirements and calculations for the proposed uses. Ms. Fredette described the parking study noting that no adverse impact is anticipated. Attorney Allen argued that **Section 6.02.2.h** of the Zoning By-Law allows the Board by special permit to waive parking requirements for the proposed use; however, the total number of off street parking spaces cannot be less than twenty-five percent of the required off-street parking spaces. He noted that under this provision, the Board could reduce the number of off-site parking spaces to 33, and the proposal provides 89 spaces.

Attorney Allen referred to the conditions proposed by the Planning Department. He stated that the revised parking condition was appropriate because the original parking requirement was calculated based on 135 nursing beds and 48 assisted living units. Mr. Allen noted that the building is currently "over-parked". He stated that the Board's condition requiring a T-pass subsidy would mitigate the requested reduction in the off-site parking spaces by encouraging employees to take public transit. Attorney Allen also noted that LCB has a van that can be coordinated for shuttle transfers as needed and bike parking will be provided on-site.

With respect to the affordable housing condition, Mr. Allen noted that the practice generally has been that an affordable housing condition outlining specific requirements under **Section 4.08** of the Zoning By-Law as recommended by HAB is provided to the ZBA for the hearing. Mr. Allen stated that while the proposed housing condition in this case is drafted in general terms, the Petitioner is comfortable moving forward with the HAB and should an agreement satisfactory to HAB not be achieved, the Petitioner will return to the ZBA.

Attorney Allen then argued that the modifications meet the standards under **Section 9.05** of the Zoning By-Law, noting the following: 1) Specific site is an appropriate location for such use: The property is located in G-2.0 General Business District and the skilled nursing units and assisted living use was approved through a substantial community and DAT process. Therefore, this modification of the use is an appropriate location for the proposed memory care units and continuance of assisted living units. 2) Use will not adversely affect the neighborhood: The modification of the interior to reduce the number of nursing beds and will be less impactful to the neighborhood. This change will not adversely affect the neighborhood. 3) No nuisance or serious hazard to vehicles or pedestrians. There will be no change to the site circulation for vehicles. The new vestibule will help with site circulation for pedestrians. 4) Adequate and appropriate facilities will be provided for the proper operation and proposed use. 5) Development will not have any effect on the supply of housing available for low and moderate-income people. This project will not have a negative effect on the supply of housing for low- and moderate-income people. The modification will positively impact the Town's affordable housing goals through the requirements under **Section 4.08** of the Zoning By-Law and incorporation of final recommended conditions from the Housing Advisory Board.

Chair Geller called for public comments in favor of the application. No comments were submitted.

Chair Geller called for public comments in opposition to the application. No comments were submitted.

Chair Geller called upon Karen Chavez, Planner and Zoning Coordinator, to deliver the findings of the Planning Department:

## **FINDINGS**

<b>ZONING: G-2.0</b>	<b>Requirements</b>	<b>Existing Conditions</b>	<b>Proposed Conditions</b>	<b>Relief Required</b>
Use	Any structure	Life Care Facility	Life Care Facility	
Lot Size	none	46,669sf	46,669sf	
Floor Area Ratio	2.0 (100%) 93,338sf	2.3 (117%) 109,429sf	2.3 (117%) 109,429sf	
Height	45'	55'6"	55'6"	
Front Setback	none	No Change	No Change	
Side Yard Setback	none	No Change	No Change	
Rear Yard Setback	10+ 1/10	No Change	No Change	
Open Space (Landscaped / Usable)	<i>none/none</i>	No Change	No Change	
Parking Spaces	133	89	89	

Other Zoning Relief Needed

Section 4.08, Affordable Housing Requirements: This section states that the development of any project set forth in § 4.08, paragraph 3, shall require the grant of a special permit from the Board of Appeals.

PLANNING DEPARTMENT COMMENTS

Ms. Chavez stated that the Planning Department is supportive of this proposal. There will be no alterations to the exterior of the building and the interior alterations are reasonable. Additionally, the existing parking will remain unchanged.



Ms. Chavez stated that the Planning Department recommends approval of the site plan by Control Point Associates, Inc., dated 1/26/21, and architectural plans by EGA Architects, dated 12/31/20, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect or engineer, and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.
2. The Applicant shall fully satisfy all obligations arising under Section 4.08 or other operative provision of the Zoning By-Law with respect to affordable housing by making a cash contribution to the Town's Affordable Housing Trust Fund (the "Cash Contribution") or providing units on-site, subject to review and approval by the Housing Advisory Board (the "HAB"). The HAB recommendation and all requirements within shall be met prior to the issuance of a building permit and certificate of occupancy, as appropriate. Should a mutually agreeable program not be available, the Applicant shall return to the ZBA for a modification of this decision with recommendation from the HAB.
3. For employees, there shall be a Transportation Management Plan, incorporating such measures as a 50% T-pass subsidy program, subject to the approval of the Transportation Director.
4. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; b) evidence that the HAB recommendation has been obtained from the Planning Department and recorded at the Registry of Deeds; and c) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

Chair Geller called upon Deputy Building Commissioner, Paul R. Campbell to deliver the recommendation of the Building Department. Mr. Campbell stated that the Building Department has no objection to the relief requested and will work with the Petitioner to ensure compliance with the Board's decision and all applicable state building codes.

The Board deliberated on the merits of the application. Board Member Meiklejohn stated that he appreciated the expert testimony provided to the Board and noted that the requested

modification and zoning relief requirements were satisfied. Board Member Zuroff concurred. Chair Geller was also in support of the requested relief and found that the Petitioner provided adequate testimony to justify the reduction in the parking and the removal of the requirement to provide off-site parking, as requested. Therefore, the Board voted to adopt the proposed conditions of the Planning Department and should this decision or conditions herein conflict with a prior ZBA decision, this decision shall control.

The Board determined subject to approved conditions below, by unanimous vote, to approve the requested modifications of prior ZBA decisions #3397 and #3397A, and that the requirements for issuance of special permits as required under Section 4.08 of the Zoning By-Law and Section 6.02.2.h of the Zoning By-Law were met in accordance with Section 9.05 of the Zoning By-Law.

The Board made the following specific findings, pursuant to said 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 modifications and the requested zoning relief, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect or engineer, and a

final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.

2. The Applicant shall fully satisfy all obligations arising under Section 4.08 or other operative provision of the Zoning By-Law with respect to affordable housing by making a cash contribution to the Town's Affordable Housing Trust Fund (the "Cash Contribution") or providing units on-site, subject to review and approval by the Housing Advisory Board (the "HAB"). The HAB recommendation and all requirements within shall be met prior to the issuance of a building permit and certificate of occupancy, as appropriate. Should a mutually agreeable program not be available, the Applicant shall return to the ZBA for a modification of this decision with recommendation from the HAB.
3. For employees, there shall be a Transportation Management Plan, incorporating such measures as a 50% T-pass subsidy program, subject to the approval of the Transportation Director.
4. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; b) evidence that the HAB recommendation has been obtained from the Planning Department and recorded at the Registry of Deeds; and c) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

Unanimous Decision of the  
Board of Appeals

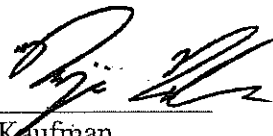


Jesse Geller, Chair

Jesse Geller, Chair

Filing Date: 10/14/2021

A True Copy  
ATTEST:



Benjamin Kaufman  
Clerk, Board of Appeals