



Jesse Geller, Chair
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Town of Brookline

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TOWN CLERK'S OFFICE
MAY 4 2022 10:11:57

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-0042

Petitioner 5 C Contracting LLC applied to the Building Commissioner for permission to construct a new two-family home with an underground garage at 809-811 Heath Street. The application was denied and an appeal was taken to this Board.

On March 7, 2022, the Board administratively determined that the property affected was that 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 March 24, 2022 at 7:00 p.m. in the Selectmen's Hearing Room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, 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 March 10, 2022 and March 17, 2022, 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: **809-811 Heath Street**
Petitioner: **809 811 Heath Street Condo**
Zoning District: **T-5 (Two-Family & Attached Single-Family)**
Precinct: **15**
Description: **Construct a new two-family dwelling**

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

Date: **03/24/2022**
Time: **7:00 pm**
Location: **Virtual Meeting (see below)**

Register for this virtual hearing:
<https://bit.ly/3hBIH6L>

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:

§4.07 – TABLE OF USE REGULATIONS, USE #05
§5.30 - MAXIMUM HEIGHT OF BUILDINGS
§5.44.1 – ACCESSORY UNDERGROUND STRUCTURES
§5.44.4 - ACCESSORY UNDERGROUND STRUCTURES

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 **Polly Selkoe** (pselkoe@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, or by checking the Town meeting calendar at: 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.*

***Jesse Geller, Chair**
Mark Zuroff
Johanna Schneider*

Publish: 03/10/2022 & 03/17/2022

At the time and place of the hearing, this Board held a virtual public hearing. Present at the hearing was Chairman Jesse Geller and Board Members Mark Zuroff and Neil Wishinsky. Attorney Mark Kablack, business address 176 East Main Street, Westborough, MA, presented the case for the petitioners.

Mr. Kablack began his remarks by stating that the property previously contained a two-family home that was demolished in 2020 after issuance of a demolition permit. He continued that the property is currently vacant and compliant with the area and frontage requirements of the T-5 zoning district. Mr. Kablack added that the proposed new two-family dwelling will comply with all dimensional standards of the T-5 district, that parking will be facilitated on-site in an underground garage, equipped with a turning platform, and that only one (1) Special Permit is required for the two-family use under **Section 4.07, Use #5**.

Mr. Kablack went on to say that the requested Special Permit conforms to the requirements of **Section 9.05** of the Zoning By-Law in that the location of the proposed two-family dwelling and garage are appropriate, the structure would have no adverse effect on the neighborhood, no nuisance or hazard to vehicles or pedestrians would be created and the proposed dwelling would not have an adverse effect on the supply of housing for low and

moderate income residents. Mr. Kablack concluded his remarks by saying the relief required is modest and the Planning Board’s unanimous positive recommendation of the proposal warrants this Board granting the Special Permit.

The Chairman then asked if anyone in attendance wished to speak in support of or in opposition to the petitioners’ proposal. No member of the public asked to participate.

Victor Panak delivered the findings of the Planning Department and the recommendation of the Planning Board.

FINDINGS

ZONING: T-5	Requirements	Proposed Conditions	Relief Required
Use	2 attached single-family dwellings	2 attached single-family dwellings	
Lot Size	5,000sf	7,515sf	
Floor Area Ratio	1.0 (100%) 7,515sf	0.99 (99%) 7,478sf	
Height	35’	30’	
Front Setback	15’	~15.2’	
Side Yard Setback (Left / Right)	10’/10’	~10.3’/~10’	
Rear Yard Setback	30’	30’	
Open Space (Landscaped / Usable)	10%/30% 752sf/2,256sf	10.8% / 30.8%	

Other Zoning Relief Needed

Section 4.07, Use #5: Two-family dwellings where units are located in the same building and separated by a party wall or, in other words, two attached single-family dwellings require a Special Permit.

Mr. Panak stated that the Planning Board was supportive of the applicants' proposal finding that applicant made noticeable improvements to the design of the building and the site over the course of the 3 meetings, particularly in terms of architectural design and vehicular circulation on site. The Board remains somewhat concerned with elements of the design that relate to energy efficiency and the lack of an overhang above the entrance to Unit #2. Nonetheless, the Board feels that the project has made significant improvements and can be approved as proposed.

The Planning Board recommends approval of the site plan by C&G Survey Company, dated 1/17/22, and architectural plans by MF Engineering & Designs Inc., dated 1/17/22, 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, 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. 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; and b) 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.**

The Chairman then called upon Paul Campbell, Building Inspector, to deliver the comments of the Building Department. Mr. Campbell stated that the Building Department has

no objections to the request for relief and stated that if the Board grants relief the Building Department will ensure compliance with the Building Code.

The Board having deliberated on this matter and having considered the foregoing testimony concludes that it is desirable to grant a Special Permit and that the petitioner has satisfied the requirements necessary for relief under Sections 4.07 and 9.05 of the Zoning By-Law and 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.

Accordingly, the Board voted unanimously to grant the requested 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, 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. 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; and b) 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

Filing Date: MAY 04 2022


Jesse Geller, Chair

A True Copy
ATTEST:


Clerk, Board of Appeals