



BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

*Town of Brookline
Massachusetts*

Town Hall, 1st Floor
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2013-0021

Petitioner 5 Kennard Road LLC, applied to the Building Commissioner for permission to construct a new dwelling at 5 Kennard Road. The Brookline Preservation Commission declared the existing dwelling at 5 Kennard Road to be non-significant. The Building Commissioner denied the Petitioner's application and an appeal was taken to this Board.

On March 21, 2013 the Board met and determined that the properties affected were those 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. The Board then fixed the date of June 13, 2013 at 8:00 p.m. in the Selectmen's Hearing Room on the sixth floor of Town Hall as the time and place of the hearing. Notice of the hearing was mailed to petitioners and their attorney, (if any of record), to owners of 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 May 31st and June 6, 2013 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice as follows:

**TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS**

Pursuant to M.G.L., C.39, sections 23A &23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: 5 Kennard Road, LLC

Owner: 5 Kennard Road, LLC

Location of Premises: 5 Kennard Road

Date of Hearing: June 13, 2013

Time of Hearing: 8:00 p.m.

Place of Hearing: Selectmen's Hearing Room, 6th Floor.

A public hearing will be held for a Special Permit from:

- 1. 5.09.2. a Design Review, special permit required.**

of the Zoning By-Law to construct a new dwelling, per plans at **5 Kennard Road**.

Said premises is located in an S-10 (single family) residential zoning district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-

734-2134 or check meeting calendar

at:<http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

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 the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

Jesse Geller

Christopher Hussey

Jonathan Book

At the time and place specified in the notice a public hearing was held by this Board. Members present were Chairman, Jesse Geller and Members Jonathan Book and Mark Zuroff.

The Petitioner was represented by Attorney Jacob Walters of Walters, Shannon & Jensen of Twenty-Seven Harvard Street in Brookline. Mr. Walters stated that the only relief required could be granted by a special permit, pursuant to **Section 5.09.2.a** of the Zoning By-Law. Mr. Walters stated that the petitioner is seeking to demolish the existing dwelling and construct a new dwelling at 5 Kennard Road. Mr. Walters added that because the new dwelling was within 100 feet of Boylston Street, design review was required. Mr. Walters added that the proposed dwelling meets all the dimensional and other requirements of the Zoning By-Law. Mr. Walters stated that the Planning Board asked the petitioner to make some changes to the design at the first hearing and as a result the petitioner made the changes requested by the Planning Board. At a second hearing before the Planning Board, that Board voted unanimously to recommend approval. Specifically the Planning Board found the revised design to be attractive and appropriate for the neighborhood. The Planning Board also found the new dwelling would not adversely affect any existing trees or landscaping, that the dwelling would fit with the surrounding houses and that there would be little or no impact upon the

neighborhood. Mr. Walters then addressed Section 9.05 of the Zoning By-Law and stated that the Special Permit being sought complied with the conditions cited by Section 905, specifically the site is appropriate for the proposed addition, the use will not adversely affect the neighborhood and will not create a nuisance to anyone. Mr. Walters concluded by noting that the neighbors had been fully informed of the details of the proposed dwelling and were not opposed.

The Chairman asked if any members of the public wished to be heard in favor or in opposition to the proposal. No one wished to be heard.

The Chairman then called upon Lara Curtis-Hayes, to speak on behalf of the Planning Board. Ms. Curtis-Hayes stated that the Planning Board was supportive of the proposed new dwelling, finding it would have no impact upon the neighborhood. Ms. Curtin-Hayes concluded by stating that the Planning Board recommended approval of the petition, subject to the following conditions:

1. Prior to the issuance of a building permit, a final site plan, including a proposed landscaping plan, indicating materials to be used for retaining walls, shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, final building elevations, indicating all materials and window details shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
3. Prior to the issuance of a building permit, the applicants 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, and b) final building elevations stamped and signed by a registered architect, and c) evidence that the Board of Appeals decision has been recorded with the Registry of Deeds.

The Chairman then called upon Michael Yanovitch, Chief Building Inspector, to speak on behalf of the Brookline Building Department. Mr. Yanovitch stated that the proposed dwelling only required relief due to its proximity to Boylston Street but otherwise was fully compliant with the Zoning By-Law. Mr. Yanovitch concluded that the dwelling was appropriate for the neighborhood, appeared well designed and had the support of the Building Department.

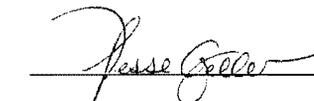
The Chairman closed the hearing and the Board began its deliberations. All the Members of the Board indicated that the relief sought was appropriate under the circumstances and specifically found that the grounds for issuance of the Special Permits were in compliance with **Section 9.05** of the Zoning By-Law.

The Board, having heard all testimony, and after review of the plans submitted, voted unanimously, to grant a special permit under **Section 5.09.2.a** and **Section 9.05** of the Zoning By-Law to allow the proposed dwelling with the following conditions:

1. **Prior to the issuance of a building permit, a final site plan, including a proposed landscaping plan, indicating materials to be used for retaining walls, shall be submitted to the Assistant Director of Regulatory Planning for review and approval.**
2. **Prior to the issuance of a building permit, final building elevations, indicating all materials and window details shall be submitted to the Assistant Director of Regulatory Planning for review and approval.**
3. **Prior to the issuance of a building permit, the applicants 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, and b) final building elevations stamped and signed by a registered architect, and c) evidence that the Board of Appeals decision has been recorded with the Registry of Deeds.**

Unanimous Decision of

The Board of Appeals



Jesse Geller, Chairman

Filing Date: June 28, 2013

A True Copy

ATTEST:



Patrick J. Ward

Clerk, Board of Appeal