



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2010-0073

Petitioner, Joseph Missaghi, applied to the Building Commissioner for permission to construct a new home on a vacant lot at 475 Heath Street. The application was denied and an appeal was taken to this Board.

On 4, November 2010, 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 and fixed 13, January 2011, at 7:15p.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, to his 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 16 and 23, December 2010, 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **JOSEPH MISSAGHI**
Owner: **Joseph Missaghi**
Location of Premises: **475 HEATH ST**
Date of Hearing: **January 13, 2011**
Time of Hearing: **7:15 PM**
Place of Hearing: **Selectmen's Hearing Room, 6th. floor**

A public hearing will be held for a variance and/or special permit from:

5.09.2.a; Design Review, new structure within 100' of Boylston Street, special permit required.

Of the Zoning By-Law to **CONSTRUCT A NEW HOME REQUIRING BOA RELIEF** at **475 HEATH ST.**

Said premise located in a **S-10 (single-family)** residence 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.

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members, Jonathan Book and Christopher Hussey. The Petitioner was represented by Attorney Roger R. Lipson of 7 Harvard Street, Suite 220. Brookline, MA 02445.

Mr. Lipson stated that the subject property had been before the Board on two previous occasions. On 29, October 1997, in Board of Appeals Case No. 3432, the Board of Appeals

granted relief to construct a new single-family dwelling at 475 Heath Street, which required design review under **Section 5.09**. Further, on 11, March 1999, in case #3432A, the Board approved modifications to the previously approved design for a new single-family dwelling at the subject address. Mr. Lipson stated that none of the work authorized in these approvals was ever done.

Mr. Lipson described 475 Heath Street as a vacant corner lot which borders Dunster Road, Heath Street and the south side of Boylston Street. The lot slopes steeply up from Boylston and then levels out. There is an existing curb cut off of Heath Street bounded by stone pillars and a stone wall that used to serve the neighboring dwelling at 471 Heath Street. There is also a stone wall running the perimeter of the property along Dunster Road and Boylston Street. The property, which is located on the other side of Route 9 from the Longyear Foundation, is heavily screened with evergreen vegetation on nearly all sides. The area is primarily residential and near the Chestnut Hill shopping area.

Attorney Lipson said that his client, Joseph Missaghi, proposes to construct a single-family home on the currently vacant lot. The proposed dwelling would be two-and-a-half stories tall and oriented towards Heath Street. The dwelling would have a hip roof. The applicant has provided two options for the design of the dwelling's roof line: either large gables as shown on the proposed front elevation plans, or large projecting hips, as shown on the proposed rear elevation plans. Instead of the attached ground-floor deck as shown on the plan Mr. Lipson reported that his client may instead construct a patio at grade. Vehicular access would be provided by an existing curb cut off of Heath Street, which previously served the neighboring dwelling at 471 Heath Street. The driveway would lead to an attached two-car garage. The neighboring dwelling at 471 Heath Street has separate vehicular access. The proposed dwelling would be clad with

clapboards, with stone at the ground level. The attic would remain unfinished. The proposed dwelling would meet all setback and FAR requirements.

Courtney Synowiec, Planner, delivered the findings of the Planning Board.

Section 5.09.2.a – Design Review: All new structures to be built on a lot that fronts on or is within 100 feet of Boylston Street require a special permit for design review. The following standards are most applicable to this proposal:

Preservation of Trees and Landscape: Since a landscape plan has not been submitted, it is not clear what landscaping will be retained and what needs to be removed to build the new dwelling. Much of the existing landscaping is located on the perimeter of the property; where the house is to be located, there is primarily lawn.

Relation of Buildings to Environment: The property is largely level except for the frontage along Boylston Street and Dunster Street, where it dramatically drops to the street elevation. Extensive grading to modify the terrain is not expected as the proposed dwelling will largely be located in this level lawn area.

Relation of Buildings to the Form of the Streetscape and Neighborhood: The new dwelling will meet the required yards and setbacks for an S-10 zoning district, and is fairly typical in design to other dwellings in the neighborhood.

Open Space: The proposal will provide the required amount of landscaped and usable open space. A landscaping plan for the site has not been submitted.

Circulation: The proposal makes use of an existing curb cut off of Heath Street to provide vehicular access to the new dwelling, so no new curb cuts are necessary.

Stormwater Drainage: The applicant should provide a drainage plan to the Engineering Department to ensure the new construction appropriately deals with the new stormwater runoff that will result from the additional impervious surface.

Ms. Synowiec reported that the Planning Board was supportive of the construction of the proposed single-family dwelling. The proposal meets all of the dimensional requirements of the Zoning By-law including FAR and height. The Planning Board requested the applicant consider making revisions to the elevations with respect to finalizing window styles, the roofline, the locations and usage of composite stone, the installation of a skirt board below the deck, and removing “gingerbread” details from the gable peaks. The Planning Board also requested the applicant complete a landscape plan indicating which vegetation would be retained and new

plantings. The applicant revised their plans and completed a landscape plan and returned to the Planning Board. The Planning Board found the revisions and landscape plan acceptable. However, as a neighbor raised concern about a previous project in the neighborhood doing work outside of the prescribed hours allowed by the Town, the neighbor requested there be a construction management plan for this project as well. The Planning Board found that request reasonable and recommended an additional condition requiring a construction management plan. Therefore, the Planning Board recommended approval of the proposal and plans, including the site plan prepared by Verne T. Porter Jr. and dated 9/28/2010, and the elevation plans prepared by Edward Yeomans and dated 9/1/2010, subject to the following conditions:

1. Prior to issuance of a building permit, the applicant shall submit final plans subject to the review and approval of the Assistant Director for Regulatory Planning.
2. Prior to issuance of a building permit, the applicant shall submit a final site and landscaping plan subject to the review and approval of the Assistant Director for Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit a construction management plan subject to the review and approval of the Building Commissioner.
4. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; and 2) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard responded that when first inquiries were made regarding whether the lot could be built upon, he required the submission of architectural plans and an affidavit from an architect as to the gross floor area of the home at 471 Heath Street. Mr. Shepard explained that 471 and the vacant lot at 475 were once held in common ownership.

Mr. Shepard said that after reviewing the requested plans and analysis he was satisfied that 471 did not need any of 475 to comply with the Zoning By-Law. Regarding the condition requiring a construction management plan, Mr. Shepard said that although the petitioner had agreed to provide one, it was a sharp departure from the normal requirements for the construction of a single family home. He said that there are adequate safeguards in his opinion with the Noise By-Law which controls hours of operation at construction sites.

During deliberations, Board Member Book said he was satisfied with the presence of a landscape plan for the project. Board member Hussey also speaking in support said that, absent Boylston Street, the Board would not even be considering this proposal. Chairman Geller stated that since it appeared the requirement for a construction management plan may make a neighbor feel more comfortable, the contractor should provide one as recommended by the Planning Board.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits and that the petitioner has satisfied the requirements necessary for relief under Sections 5.09.2.a, and 9.05 of the Zoning By-Law and made the following specific findings pursuant to 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 issuance of a building permit, the applicant shall submit final plans subject to the review and approval of the Assistant Director for Regulatory Planning.**

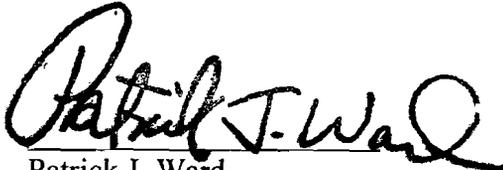
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Unanimous Decision of

The Board of Appeals

Filing Date: January 28, 2011

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals


Jesse Geller, Chairman

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