



Board of Appeals
Jesse Geller, Chair

Town of Brookline

Massachusetts

Town Hall, 3rd Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2130 Fax (617) 730-2442

Board of Appeals Virtual Public Hearing Minutes
Thursday, September 9, 2021
7:00 p.m.
Via ZOOM

ZBA DECISIONS can be found at: <https://www.brooklinema.gov/Archive.aspx?AMID=76>

Board Members Present: Chair Jesse Geller, Mark Zuroff, and Randolph Meiklejohn

Staff Present: Paul R. Campbell (*Deputy Building Commissioner*) and Karen Chavez (*Zoning Coordinator/Planner - Regulatory Planning*)

Chair Jesse Geller opened the meeting.

2021-0021 17 Hart Street – Demolish existing building and construct single-family dwelling

Attorney Robert L. Allen, on behalf of the applicant, requested a continuance to November 18, 2021.

Mr. Allen stated that the project had been heard at the Planning Board twice, and the project team is getting close to a design that the neighborhood and the Planning Board would be satisfied with, and therefore he is requesting additional time.

Chair Jesse Geller, and Board Members Mark Zuroff and Randolph Meiklejohn had no objection.

The Board unanimously granted the request to continue the application to November 18, 2021.

2021-0050 615 Heath Street – Modification of previous ZBA Decisions to allow for the addition of memory units

The Petitioner's Attorney, Robert L. Allen, waived the reading of the public hearing notice and provided an overview of the project.

Mr. Allen stated that also in attendance were representatives for the Petitioner: Lee Bloom, Ed SanClemente, and Ted Doyle and 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 stated that as there is no significant exterior modification proposed to the building and the modification request relates to the change in use, 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 stated 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.

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.

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

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

Ms. Murphy then 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 then discussed the parking calculations. Ms. Fredette described the study noting that no adverse impact is anticipated. Attorney Allen opined that **Section 6.02.2.h** of the Zoning By-Law allows the Board to waive parking requirements for the proposed use; however, the waiver 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 then 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.

In terms of the affordable housing condition, Mr. Allen noted that the practice generally has been that a recommended affordable housing condition outlining the details how the proposal will satisfy **Section 4.08** of the Zoning By-Law provided to the ZBA from the HAB. Mr. Allen stated that while the proposed housing condition is drafted in general terms, the Petitioner is comfortable moving forward with the HAB and should an agreement not be available, will return to the ZBA.

Attorney Allen then stated 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 review of conditions by 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:

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 then 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 then determined, by unanimous vote, that the Proposal met the requirements for a modification of prior ZBA decisions #3397 and #3391A, a special permit as required under **Section 4.08** and parking reduction pursuant to **Section 6.02.2.h**.

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 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.

2021-0045 106 Sargent Road – Construct basement

Paul Campbell, Deputy Building Commissioner, stated that the Building Department had no objections, and would work with the Petitioner to ensure compliance.

2021-0011 15 Euston Street – Add new unit to existing three-family, no exterior changes

Minutes

The Board unanimously approved the Minutes for August 19, 2021.

The meeting was adjourned.