



Town of Brookline Massachusetts

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Benjamin Kaufman, Clerk

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Johanna Schneider

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-00024
BENEDETTO VALENTE
1693 BEACON STREET, BROOKLINE, MA

Petitioner, Benedetto Valente, applied to the Building Commissioner for permission to convert existing commercial space on the first floor of the building into a new residential unit. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed June 17, 2021, at 7:00 p.m. virtually as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, 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 June 3, 2021, and June 10, 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: **1693 Beacon Street**
Petitioner: **Benedetto Valente**
Zoning District: **G-1.75(WS) (General Business)**

Precinct: 14
Description: Convert first floor unit from commercial to residential unit

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

Date: 06/17/2021
Time: 7:00 pm
Location: Virtual Meeting (see below)

Register for this virtual hearing:

<https://bit.ly/34jNMdg>

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 #06

§5.07 – DWELLINGS IN BUSINESS AND INDUSTRIAL DISTRICTS

§5.09.2.A – DESIGN REVIEW

§8.02 – ALTERATION OR EXTENSION

§4.08.3.a – Which has been reduced from six or more units to 4 units and in which one new unit will be created. Refer to Warrant Article 7 passed at town meeting November 18, 2020.

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).

*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: 06/03/2021 & 06/10/2021

On June 17, 2021, at 7:00 pm, the Brookline Zoning Board of Appeals held a virtual public hearing. Present at the hearing were Chair Jesse Geller and Board Members Randolph Meiklejohn and Johanna Schneider. Also present at the hearing was Zoning Coordinator and Planner, Karen Chavez and Deputy Building Commissioner, Paul Campbell.

The Petitioner's attorney, Robert L. Allen, Law Office of Robert L. Allen, Jr. P.C., 300 Washington Street, Brookline, Massachusetts, waived a reading of the public hearing notice for the record.

Attorney Allen stated that 1693 Beacon Street is a mixed-use building constructed in the early twentieth century, located in a G-1.75 (WS) zoning district, that is currently a three-family dwelling with two existing commercial units. He noted that the structure is one of five attached row houses. Mr. Allen stated that one commercial unit is 831 square feet, and the other commercial unit is 758 square feet, the latter of which is currently vacant. Mr. Allen explained that the proposed scope of work is to convert the vacant commercial unit to a residential unit, with no exterior changes. Mr. Allen noted that this district consists mostly of commercial buildings with some residential buildings, and added that large multi-family buildings are located adjacent and directly across from the project site.

He explained that the Planning Board was unanimously supportive and was pleased that there were no exterior changes since the building is located in an historic and protected street.

Mr. Allen stated that the use conversion from commercial to residential triggers the need for a special permit under **Section 4.08** of the Zoning By-Law related to affordable housing. Mr. Allen then stated that a variance is also required since the conversion will result in forty seven percent (47%) of the building being used for a residential use, which exceeds the maximum allowed for a residential use within the General Business Zoning District of forty percent (40%) as provided in **Use 6** under the **Section 4.07** of the Zoning By-Law. Mr. Allen explained that the applicant is requesting a use variance, and further explained that due to the nature of the use variance, a special permit is also required under **Section 5.09** of the Zoning By-Law.

Mr. Allen expressed that there is conformity among the existing five row house buildings, and described the architectural pattern of rounded and squared bays, and the stairs and entrances to each building. Relying on a presentation that showed a study of the buildings within the Zoning District, most of which are single-story commercial buildings, Mr. Allen described the uniqueness of the subject building and noted that no other building in this district is faced with the same dimensional constraints. Mr. Allen further explained that if the forty percent (40%) limitation of the Zoning By-Law were enforced, petitioner's change of use would necessitate disruption in the pattern of row house buildings, including relocating the door and stairs and which trigger an eighteen-month stay under the Town's preservation ordinance and require further design review by the Planning Board. Mr. Allen opined that such a change would most likely not get the support of the Planning Board. Mr. Allen noted that there would be significant costs associated with having to move the door, and added that a significant financial hardship would thereby be imposed. Mr. Allen opined that commercial offices such as the project site have been struggling to find tenants and explained that the proposed project could be granted without substantial detriment to the public good.

Board Member Meiklejohn asked about how the forty percent was measured, and Mr. Allen demonstrated from where the dimension was measured.

Chair Geller called for public comments in favor of the proposal. One written comment was submitted in favor of the proposal and no one spoke in support of the proposal.

Chair Geller called for public comments in opposition to the proposal. No comments were submitted and no one spoke in opposition.

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

FINDINGS

Section 4.07, Use 6: This use permits multi-family dwellings in G districts provided that no more than 40% of the building's frontage on the ground floor is devoted to residential use. The applicant is requesting relief from this requirement to allow 47% of the façade to be devoted to residential use. Staff believes a Variance is required, which can be granted by the permit granting authority per MGL c.40A §10 in situations where, owing to circumstances relating to soil conditions, shape of the lot, or topography affecting the subject property or structure but not generally affecting the zoning district, a literal enforcement of the zoning by-law would cause substantial hardship to the applicant.

Section 4.08, Affordable Housing Requirements: The proposed conversion results in a building that, upon completion, will have four or more units. Three of the units are pre-existing units located wholly within the habitable area of the pre-existing building and therefore are not counted for the purpose of calculating the cash payment option.

Section 8.02, Alteration or Extension: A special permit is required for the alteration of a non-conforming structure.

PLANNING DEPARTMENT COMMENTS

Ms. Chavez stated that the Planning Department is supportive of this proposal if the Zoning Board of Appeals finds that the criteria for the granting of a Variance are met. She noted that this portion of the Washington Street commercial area is already primarily residential in character and allowing an additional 7% of the building's façade to be a residential use will not detract from the existing character of the neighborhood.

PLANNING BOARD RECOMMENDATION

Ms. Chavez stated that the Planning Board is supportive of this proposal. Some Board members questioned the choice of door/window for the residential entrance, but did not object to it. She stated that provided that the ZBA can find that a Variance can be granted, the Planning Board recommends approval.

Ms. Chavez therefore stated that the Planning Board recommends approval of the plans by Visnick Design Studio LLC, dated 3/20/21, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans, 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. In accordance with Section 4.08 of the Zoning By-law and guidelines regarding "Cash Payments in Lieu of Affordable Units", approved by the Planning Board on January 7, 2021, and with the choice of the applicant to make a cash payment in lieu of providing affordable units, the owner of the property shall make the following payment to the Brookline Housing Trust and provide the following documentation before the Town's issuance of a Certificate of Occupancy for the project:

A sum equal to .5% of the Market Value of the property (as determined by the Assessor's Department of the Town per the Town's guidelines for "Cash Payment in lieu of Affordable Units") provided to the Town of Brookline in the form of a bank check, certified check or check drawn on the Attorney Client's Fund Account, payable to the Brookline Housing Trust.

The check should be mailed by first class mail or hand delivery to:

*Director of Planning & Community Development
333 Washington Street – 3rd floor
Brookline, MA 02445*

Should the property be subsequently converted and sold as condominiums, the developer or subsequent owner shall make an additional trust payment as a condition of a transfer of each condominium, calculated per the Town's guidelines for "Cash Payment in lieu of Affordable Units"

Prior to the issuance of a building permit, the owner shall execute a mortgage, escrow agreement, letter of credit or other documentation approved by the Director of Planning and Community Development to secure the cash payments required by this condition.

3. 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 and floor plans 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.

Chair Geller then called upon Deputy Building Commissioner, Paul Campbell to deliver the opinion of the Building Department. Mr. Campbell asked whether the building was sprinkled, and Mr. Allen stated that he would follow up with a response. 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 state building codes.

Mr. Allen explained that **Sections 4.08** and **5.09** of the Zoning By-Law trigger a special permit, and added that the proposal meets the standards for the grant of a special permit under **Section 9.05** of the Zoning By-Law, and stated as follows: 1) **Specific site is an appropriate location for such use:** The site is appropriate for the proposed use as a four-unit dwelling with a commercial unit, which is allowed in the G-1.75 district. The property currently has three dwelling units and two commercial units. 2) **Use will not adversely affect the neighborhood:** While the zoning district is largely commercial, the surrounding neighborhood is residential, including the other attached units and the addition of another residential unit will not adversely affect the neighborhood. 3) **There will be no nuisance or serious hazard to vehicles or pedestrians:** Vehicular and pedestrian site access will remain the same. 4) **Adequate and appropriate facilities** will be provided for the proper operation as a four-unit dwelling building with one commercial unit. 5) **There will be no effect on the supply on housing available for low- and moderate-income people.** The proposal will result in a payment being made to the affordable housing trust.

Chair Geller asked if the applicant considered putting the residential unit on the right side of the building to avoid the necessity for the variance. Mr. Allen stated that the issue would remain the same, and also noted that there is an existing tenant in that unit.

The Board then deliberated on the merits of the application. Board Member Schneider was satisfied that the criteria for the grant of the variance relief, as requested, had been met, and stated that this site and building are unique. Board Member Schneider noted that there would be a hardship to the applicant if the Zoning By-Law was enforced, and stated that she supports both the variance and the special permit relief requested. Board Member Meiklejohn agreed with Board Member Schneider and added that there is no benefit to the public, or anyone else, by enforcing the By-Law. Chair Geller agreed with Board Members Schneider and Meiklejohn, and stated that the proposal meets the requirements for a special permit under **Section 9.05** and for a use variance under **Section 9.09** of the Zoning By-Law.

The Board voted unanimously to grant a variance from the provisions of Use #6, as specified in **Table 4.07** of the Zoning By-Law, and a special permit pursuant to **Sections 5.09, 4.08** and **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 zoning relief, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans, 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. In accordance with Section 4.08 of the Zoning By-law and guidelines regarding "Cash Payments in Lieu of Affordable Units", approved by the Planning Board on January 7, 2021, and with the choice of the applicant to make a cash payment in lieu of providing affordable units, the owner of the property shall make the following payment to the Brookline Housing Trust and provide the following documentation before the Town's issuance of a Certificate of Occupancy for the project:

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3. 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 and floor plans 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.

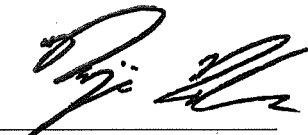
Unanimous decision of the
Board of Appeals



Jesse Geller, Chair

Filing Date: 7/12/21

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals