



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Mark Zuroff
Johanna Schneider

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TOWN CLERK'S OFFICE
MAY 27 '22 AM 8:10

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2022-00003
1004-1016 BEACON STREET

Petitioner Lineage RE Brookline, LLC applied to the Building Commissioner for permission to construct a pergola structure at 1004-1016 Beacon Street. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed April 28, 2022, 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 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 April 7, 2022 & April 14, 2022 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

NOTICE OF HEARING

The Brookline Zoning Board of Appeals will hold a virtual public hearing via ZOOM on Thursday, April 28, 2022 at 7:00pm

Registration Link: <https://bit.ly/3NCWAQQ>

The ZBA will consider the following pursuant to M.G.L. 40A & the Brookline Zoning-Bylaw:

Petitioner: David Braga **Address:** 1004 -1016 Beacon Street

Zoning: L-1.0 **Precinct:** 1

Description: Construct a permanent pergola/canopy along the front facades to accommodate outdoor dining

The Board will consider variances and/or special permits from the following sections of the By-law (and any additional zoning relief the Board deems necessary):

§5.09.2.A – DESIGN REVIEW

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.50 - FRONT YARD REQUIREMENTS

§8.02 - ALTERATION OR EXTENSION

OR ANY OTHER RELIEF THE BOARD MAY FIND NECESSARY

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://brooklinema.gov/DocumentCenter/Index/2352>.*

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.

Assistive Listening Devices are available upon request:

<https://www.brooklinema.gov/560/Americans-With-Disabilities-Act-ADA>

Jesse Geller, Chair

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Publish: 4/7/2022 & 4/14/2022

On April 28, 2022, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chair Johanna Schneider and Board Members Mark Zuroff and Neil Wishinsky. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., RLAW P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance was the project architect, Mark Joyce, Phase Zero Design, 35 Pond Park Rd, Bay 16, Hingham, Massachusetts.

Zoning Board of Appeals Chair Schneider called the hearing to order at 7:00 p.m. Chair Schneider reviewed the standard hearing procedure for virtual hearings and confirmed that all

board members and staff could visually and auditorily engage in the hearing. Attorney Allen waived a reading of the published notice.

Attorney Allen presented the case for the Petitioners. Attorney Allen stated that the commercial building located at 1004-1016 Beacon Street is in the L-1.0 Zoning District and added that the Petitioner is proposing a pergola structure that would span across the front of the building with a zero-foot setback to the property line. Attorney Allen continued that the existing commercial building includes the Economy Hardware, O'Leary's, Dunkin', and Sichuan Garden. He stated that the project's goal is to allow tenants to expand to the outside and liven up this St. Mary's commercial district area.

Attorney Allen then summarized the requested zoning relief. He stated that a special permit is required for design review because of the proposed changes on Beacon Street and noted that an impact statement, as required under **Section 5.09**, was provided to the Board of Appeals. He added that the Planning Board was unanimously supportive of the proposal, however, would like final design review over the pergola structure, and the Petitioner was amenable to the recommended condition. Attorney Allen stated that a special permit is requested for the front yard set under **Section 5.50** and added that the Board of Appeals may grant relief under **Section 5.43** so long as the Petitioner provides adequate counterbalancing amenities. He stated that the existing building setback is approximately 19.8-feet from the property line, and the pergola structure would be setback zero feet where there is a 10-foot setback required under the Zoning By-Law and added that the remaining public sidewalk would still be approximately 10-feet. Attorney Allen stated that counterbalancing amenities are proposed and include new bike racks and landscaping along the property line and added that the facade upgrades also serve as an improvement to this commercial area.

Attorney Allen then reviewed the special permit requirements enumerated in **Section 9.05**, stating the followings: 1) Specific site is an appropriate location for such use: The property is located in a business district and the use is an allowed use. 2) Use will not adversely affect the neighborhood: The pergola remains on private property and all town regulations will be followed. 3) No nuisance or serious hazard to vehicles or pedestrians: There will be no change to the site circulation for vehicles or pedestrians. The transportation division was consulted and there were no concerns about the impact o vehicles, pedestrians or bicycles. 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 on housing available for low- and moderate-income people.

Upon inquiry from Board Member Wishinsky, Mr. Joyce confirmed that the piers of the pergola will be behind the property line and would be aligned with abutting outdoor expansions. Upon inquiry from Board Member Zuroff, Attorney Allen stated that if a business is not interested in having a pergola structure, that particular tenant might not be a good fit. He continued that feedback provided from commercial brokers is that businesses are interested in this type of expansion. The Board discussed how signage would be treated, and Attorney Allen confirmed that all signage, including tenant signage, would be reviewed and approved by the Planning Board.

Chair Schneider then called for public comments in support of or opposition to the Petition. Sarah Lindquist, 15 St Mary's Court, stated that she was concerned about noise from prospective tenants and added that there are other restaurants along Beacon Street that have temporary outdoor dining, therefore, a permanent pergola structure is not necessary and would be premature as the future tenants are unknown.

Chair Schneider then called upon Maria Morelli, Senior Planner, to present the Planning Board report.

FINDINGS

ZONING: L-1.0	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Front Yard Setback	10'	19.8'	0'	<u>Special Permit</u>¹

¹ **Section 5.43, Exceptions to Yard and Setback Regulations:** Relief from setback requirements can be granted through Section 5.43 which states that relief may be granted if the applicant can provide an adequate counterbalancing amenity that mitigates negative impacts arising from the requested deviation from the requirements of the Zoning Bylaw.

Other Zoning Relief Needed

Sections 5.09.2.A, Design Review: Design review is required of any structure which fronts on or is within 100 feet of Beacon Street. The applicant has submitted an Impact Statement that explains how the project addresses the Community and Environmental Impact and Design Standards.

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

PLANNING DEPARTMENT COMMENTS

Ms. Morelli stated that while the Planning Department is generally very supportive of the concept behind expanding outdoor seating and activating the pedestrian space in front of this gateway commercial location, staff have several concerns with this specific proposal. First, she noted, the extent of the pergola’s encroachment into the required setback area is excessive and one of the defining features of the St. Mary’s commercial area is the wide sidewalks allowing for a very free and open pedestrian experience. Ms. Morelli continued that as a result of this proposal, the sidewalk width in front of this building would be reduced from approximately 30 feet to approximately eight to 10 feet. She added that while not an impractical sidewalk width, the reduction entails a significant change in character. She noted that this change might be reasonable if the size of the pergola could be justified, however, in staff’s opinion, 271 outdoor

seats for six commercial locations is very excessive even under the assumption that all six locations will be occupied by food/drink establishments that will make use of the approximately 45 spaces allotted to them. Unfortunately, she added, that assumption is not a guarantee and where a space is not ultimately occupied by a food/drink establishment, the corresponding pergola space risks being left as an unused empty space with no purpose. Ms. Morelli stated that the unused space will have reduced the pedestrian sidewalk for no appreciable benefit. She noted that Planning staff recommends that the pergola be reduced in width by at least 5 feet, leaving a 13-15 feet wide sidewalk and a more reasonable quantity of outdoor seating, or a less permanent treatment for the comfort of diners, such as tables with umbrella or a retractable awning.

PLANNING BOARD COMMENTS

Ms. Morelli stated that the Planning Board was enthusiastic about the idea of having a stretch of covered restaurants and potentially other businesses under a pergola on this portion of Beacon Street and recommended approval of the relief needed for the intrusion into the front yard setback. However, she noted that the Board emphasized that exactly how the pergola is designed and how the area is demarcated from the public sidewalk is of utmost importance. Therefore, Ms. Morelli stated, the Board was comfortable recommending approval of a setback of 0' from the property line, provided that the applicant returns to the Planning Board for approval of all design details. She added the Planning Board also discussed how rain and snow from the canopy would be handled, and the Board recommended a condition for a storm water management plan to be reviewed and approved by the Director of Transportation and Engineering. She continued that at the Planning Board meeting neighbors spoke in support of the proposal and urged the Planning Board to not delay this welcome improvement to the St. Mary's commercial area and described how the area has become run down over the years. She

added that neighbors who spoke at the Planning Board meeting also had questions about what would happen if one of the retail spaces were not a restaurant, if noise would impact nearby residences, and whether the pergola should extend as far as planned into what is now sidewalk area.

Therefore, Ms. Morelli stated that the Planning Board unanimously recommends approval of the site plan by Phase 0 Design, dated 11/04/21, and architectural plans by Phase 0 Design, dated 1/21/22, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final design plans, including details of the canopy, its material, lighting, and heating elements, its installation, and its sign band stamped and signed by a registered architect for review and approval of the Planning Board.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a final site plan stamped and signed by a registered engineer or land surveyor and a landscaping plan, including details of the planters and plant material to demarcate the seating or commercial area to serve as the counterbalancing amenity for review and approval of the Planning Board. The counterbalancing amenity shall be executed according to the approved plan.
3. Prior to the issuance of a building permit, the applicant shall electronically submit plans for how rain and snow on the canopy will be addressed and a stormwater plan subject to the review and approval of the Director of Transportation and Engineering.
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, design 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.

Upon inquiry from Chair Schneider, Attorney Allen confirmed that the proposed pergola would remain on private property and would be consistent with other outdoor expansions in the area. He continued that further reducing the width of the pergola structure to provide a greater setback from the property line would impact the programming of the space and noted that the seating would need to comply with accessibility requirements, the viability of which could be

compromised.

Chair Schneider then called upon Paul R. Campbell, Deputy Building Commissioner, to deliver the findings of the Building Department. Mr. Campbell stated that the Building Department has no objection to the requested relief and added that should the Board of Appeals grant the requested relief, the Building Department would work with the Petitioner to ensure conformance with the Board's decision and all applicable building codes.

In discussion, Chair Schneider stated that she was supportive of the project's goal to support commercial vitality in the St. Mary's commercial district. She continued that the proposed structure would remain on private property, noted that the zoning relief request is only the beginning of a process, and added that any restaurant would undergo review by various Town boards. Board Member Wishinsky was supportive of the requested relief and noted that if a restaurant sought to operate in one of the spaces, a license from the Select Board would be required, and continued that any license application would go through a thorough review process that would include neighbor outreach. He added that the St. Mary's neighborhood is active and engaged in that public process, and the Select Board may condition any license to mitigate impacts from a proposed establishment to protect against concerns such as addressing noise by regulating hours of operations. He added that the sidewalk would remain wide and consistent with adjoining properties and noted that the pergola structure and associated use of the space would be a positive and exciting addition to the neighborhood. Board Member Zuroff concurred and pointed out that the regulatory processes established in the Town would provide adequate review to protect the community. He stated this area is a gateway into Brookline and supported this enhancement to this commercial area. Chair Schneider concluded deliberation by stating that relief under **Section 5.43** was appropriate as the Petitioner proposed adequate counterbalancing amenities such as stormwater management, bike racks, landscaping and other facility upgrades.

The Board then determined, by unanimous vote, that the proposal met the requirements for the grant of a special permit under Section 5.43 for the waiver of the front yard requirement of 10-feet under Section 5.50 to permit a pergola structure with a front yard setback of zero-feet and Section 5.09.2.A for design review for the pergola structure and proposed façade alterations on Beacon Street.

In addition, the Board made the following specific findings under Section 9.05 based on the evidence submitted at the hearing and the Board’s deliberation:

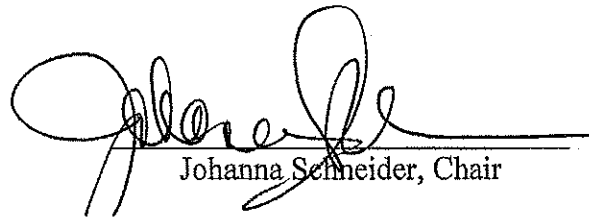
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will not have any effect on the supply of housing available for low- and moderate-income people.

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 design plans, including details of the canopy, its material, lighting, and heating elements, its installation, and its sign band stamped and signed by a registered architect for review and approval of the Planning Board.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a final site plan stamped and signed by a registered engineer or land surveyor and a landscaping plan, including details of the planters and plant material to demarcate the seating or commercial area to serve as the counterbalancing amenity for review and approval of the Planning Board. The counterbalancing amenity shall be executed according to the approved plan.
3. Prior to the issuance of a building permit, the applicant shall electronically submit plans for how rain and snow on the canopy will be addressed and a stormwater plan subject to the review and approval of the Director of Transportation and Engineering.

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, design 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



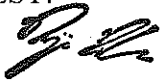
Johanna Schneider, Chair

MAY 27 2022

Filing Date: _____

A True Copy

ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals