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**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Mark Zuroff  
Johanna Schneider

# *Town of Brookline*

## *Massachusetts*

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2022-000021  
686 WASHINGTON STREET,  
BROOKLINE, MA

Petitioner 686 Washington LLC applied to the Building Commissioner for permission to convert building from mixed-use to three-family dwelling. 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 14, 2022, and April 21, 2022, in the Brookline TAB, a newspaper circulated 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:** Washington 686 LLC **Address:** 686 Washington Street

**Zoning:** M-1.0 **Precinct:** 10

**Description:** Convert building from mixed-use to three-family dwelling.

**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**

**§5.10 - MINIMUM LOT SIZE**

**§5.20 - FLOOR AREA RATIO**

**§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS**

**§5.50 - FRONT YARD REQUIREMENTS**

**§5.60 - SIDE YARD REQUIREMENTS**

**§5.70 - REAR YARD REQUIREMENTS**

**§5.91 - MINIMUM USABLE OPEN SPACE**

**§6.01.2.A – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-  
STREET PARKING FACILITIES**

**§6.02.2.H – OFF-STREET PARKING SPACE REGULATIONS**

**§6.04.14 – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**§6.04.14.C – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**§8.02 - ALTERATION OR EXTENSION**

**Table 5.01 footnote 1 - Garage entrance setback**

***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](mailto: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](mailto:vpanak@brooklinema.gov), or by checking the Town meeting calendar at: [www.brooklinema.gov](http://www.brooklinema.gov).*

**Assistive Listening Devices** are available upon request:

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

*Jesse Geller, Chair  
Mark Zuroff  
Johanna Schneider*

**Publish: 4/14/2022 & 4/21/2022**

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing and continued the hearing to May 28, 2022, at 7:00 p.m. without testimony. Present at the continued hearing was Chair Johanna Schneider and Board Members Mark Zuroff and Lark Palermo. The case was presented by the attorney for the Petitioner, Attorney Robert Allen, RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance was Bond Worthington, architect, Bond Worthington Architecture, 110A Inman Street, Cambridge, Massachusetts.

Zoning Board of Appeals Chair Schneider called the hearing to order at 7:00 pm. 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 Petitioner. Attorney Allen stated that the lot at 686 Washington Street is zoned as M1.0, Multi-Family Residential District. He continued that the project seeks to increase the conformity of the lot in several ways, including the conversion of retail space into a residential garage, thereby eliminating an existing nonconforming commercial use, and by connecting the separate garage to the existing building, thereby eliminating the

nonconforming condition of having multiple principal structures on a single lot. He added that the project did not call for extensive structural changes and that several nearby properties had undergone similar conversions. Attorney Allen stated that the Planning Board was unanimously supportive of the proposal, subject to the condition that the Petitioner return to the Planning Board for final design review. Attorney Allen noted that the Planning Board suggested that the height of the commercial unit be lowered to match the height of the garages on either side of 686 Washington Street. He stated that the Petitioner is amenable to this change and that revised plans with the height reduction had been submitted to the Board of Appeals. Attorney Allen closed by requesting that the record reflect a change to the architectural plans, dated May 16, 2022. Ms. Polly Selkoe, Planning Department, acknowledged May 16, 2022, as the date of the changed plans.

Mr. Worthington then presented the architectural and site plans to the Board. In reliance on a digital presentation, Mr. Worthington stated that, to convert the existing commercial space into a garage, the structure would be lengthened by roughly five feet and incorporated into the property's existing residential structure. Mr. Worthington continued that the new space would allow the residents to more easily store and dispose of trash and recycling and that, aside from a minor elevation change and reconfiguration of the existing patio area, no other changes to the first floor were planned. Mr. Worthington noted that the garage's planned height had been lowered by three feet to address concerns from the Planning Board about the plan's potential inconsistency with neighboring structures and the possibility of obstructing the views of passersby. He concluded that the project would incorporate the existing separate structures into a single building and would improve the streetscape and existing patio area.

Mr. Worthington noted that each of the three floors would contain a separate residential unit. Attorney Allen added that creating the new unit would require no external modifications. In

reference to his presentation, Mr. Worthington reported that the first-, second-, and third-floor units would contain, respectively, 1,021, 1,020, and 921 square feet.

Attorney Allen then reviewed the requested relief. He stated that a special permit is sought under **Section 8.02** because the proposal requires altering an existing structure that houses a nonconforming use. Attorney Allen added that the conversion of the present retail space into a garage area would result in a lower floor area ratio. He stated that a special permit from the usable open space requirement of 792.6 square feet is sought and argued that because the usable open space requirement would remain unchanged after completion of the project, the relief is available under **Section 8.02**. He continued that a special permit is also sought under **Section 6.04.12**, as the proposed front yard setback would not satisfy the minimum of 15 feet required by **Section 5.50**. Attorney Allen noted that under **Section 6.04.12**, the Board of Appeals may, under a special permit after a hearing, provide substitute dimensional requirements where new parking facilities are being installed to serve an existing structure, which, he continued, is the case with the Petitioner's proposal.

Attorney Allen then stated that relief was also sought from the parking requirement of **Section 6.02.2.h**, as the Petitioner's lot can only accommodate parking for two vehicles, not the three prescribed by the subsection. He noted that under **Section 6.02.1.b**, the Board of Appeals by special permit may waive the parking requirement for the project by special permit, which, he added, would still represent an improvement over the existing two-unit residence's total lack of off-street parking. Attorney Allen continued that relief was sought from the off-street parking design provisions of **Section 6.04.14**. He noted that under **Section 6.04.14.c**, the Zoning Board of Appeals may grant a special permit waiving the design requirements of that section, but only to the extent that the Board finds that a garage accessed by or facing a side or rear yard is not feasible.

Attorney Allen asserted that the garage would only be feasible as a front-facing structure and, therefore, that the special permit was warranted.

Attorney Allen then reviewed the special permit standards enumerated in Section 9.05, stating the followings: 1) Specific site is an appropriate location for such use: The property is located in a residential district, the house is among the last houses before entering the commercial district, and several nearby properties have undergone similar transformations. Moreover, the proposal would change the existing nonconforming ground floor commercial use into a permissible residential use and would eliminate the existing nonconforming condition of having multiple principal structures on a single lot. 2) Use will not adversely affect the neighborhood: By reducing the height of the garage in accordance with the recommendation of the Planning Board, the streetscape would be improved by making the structure more consistent with neighboring row houses. Attorney Allen also noted that the home's trash and recycling storage will be hidden from public view in the new garage and that the only street tree endangered by the project is capable of being replanted, with an appropriate spot for its relocation having already been identified. 3) No nuisance or serious hazard to vehicles or pedestrians: The proposed garage will be dedicated to a permissible residential use and would represent a distinct improvement over the lot's existing lack of off-street parking. 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 Chair Schneider, Ms. Selkoe stated that, after discussions with the Deputy Building Commissioner, the Planning Department concurs that the requested relief was available by special permit, and not by variance as had been earlier indicated in the Planning Board report.

Chair Schneider then called for questions or comments from members of the public. After no such questions or comments were raised, Chair Schneider called upon Ms. Selkoe, this time to present the Planning Board report.

**FINDINGS**

<b>ZONING: M-1.0</b>	<b>REQUIREMENTS</b>		<b>EX. &amp; PROP. CONDITIONS</b>		<b>Relief Required</b>
	<b>For existing use (mixed-use)</b>	<b>For proposed use (multi-family)</b>	<b>Existing</b>	<b>Proposed</b>	
<b>Use</b>	Any other structure or principal use	Other dwelling structure	Mixed-use	Multi-family use (3 units)	
<b>Lot Size</b>	<b>5,000sf</b>	<b>5,000sf</b>	<b>1,890sf</b>	<b>1,890sf</b>	<b><u>Special Permit</u><sup>1</sup></b>
<b>Floor Area Ratio</b>	<b>1.0 / 100% (1,890sf)</b>	<b>1.0 / 100% (1,890sf)</b>	<b>2.25 / 225% (4,257sf)</b>	<b>2.10 / 210% (3,963sf)</b>	<b><u>Special Permit</u><sup>1</sup></b>
<b>Height</b>	40'	40'	39'	39'	
<b>Front Yard Setback</b>	<b>25'</b>	<b>15'</b>	<b>19.9'</b>	<b>0.7'</b>	<b><u>Variance</u><sup>2</sup></b>
<b>Side Yard Setback</b> Left Right	24.06' 24.06'	0' 0'	0' 0'	0' 0'	
<b>Rear Yard Setback</b>	<b>40'</b>	<b>30'</b>	<b>18.8'</b>	<b>18.8'</b>	<b><u>Special Permit</u><sup>1</sup></b>
<b>Landscaped Open Space</b>	20% (851sf)	10% (396sf)	17% (744sf)	19% (744sf)	
<b>Usable Open Space</b>	none	20% (793sf)	0% (0sf)	0% (0sf)	<b><u>Variance</u><sup>2</sup></b>
<b>Parking</b>	2	3 spaces (1 per unit)*	0	2	<b><u>Special Permit</u><sup>3</sup></b>

\* Section 6.02.2.h reduces the parking requirement of any new construction, redevelopment, or conversion in the TPOD that results in an increase in the number of housing units to 1 space per unit.

<sup>1</sup> Section 8.02, Alteration or Extension: This section allows nonconforming uses or structures to be altered by Special Permit provided that any nonconforming condition may not be increased.

<sup>2</sup> Variance - MGL c.40A §10: This section allows the permit granting authority to grant a Variance from requirements of the local zoning by-law but only in situations where, owing to circumstances relating to

soil conditions, shape of the lot, or topography affecting the subject property but not generally affecting the zoning district, a literal enforcement of the zoning by-law would cause substantial hardship to the applicant.

<sup>3</sup> **Section 6.02.1.B, Off-Street Parking Regulations:** This section allows the Zoning Board of Appeals to reduce or eliminate by Special Permit the minimum parking requirements for any residential use if the ZBA finds that the reduction or elimination of minimum parking requirements accomplishes one or more counterbalancing amenities.

#### Other Zoning Relief

**Section 5.09.2.A, Design Review:** Section 5.09 states that Design Review is required for any structure which is located on or within 100 feet of Beacon Street or Washington Street (§5.09.2.A). This project falls under this category, and therefore requires Design Review. The applicant has submitted an Impact Statement as required by §5.09.3.C, which describes how the project satisfies the Community and Environmental Impact and Design Standards of §5.09.4.

**Section 6.04.14, Design of All Off-Street Parking Facilities:** No more than 40% of the width, or twenty-four feet, whichever is less, of the façade of a building facing a way or within 45 degrees of parallel to a way may be devoted to the entrance of a garage, carport, or covered parking area. The Board of Appeals may grant a Special Permit to waive the requirements of this Section, but only to the extent necessary, if it finds that a garage, carport, or covered parking area, accessed by or facing a side or rear yard on a lot is not feasible or would result in substantially less landscaped or usable open space on the lot.

#### PLANNING DEPARTMENT COMMENTS

Ms. Selkoe reported that the Planning Board is supportive of the proposal. She noted that the Board looked favorably upon the Petitioner's intent to bring the existing property into greater conformance with the applicable zoning regulations by converting the nonconforming commercial space into a residential garage. Ms. Selkoe continued that the Planning Board, in deciding to support the project, had also considered the fact that neighboring structures had already undergone changes similar to those proposed by the Petitioner. She further stated that the Planning Board's initial concern with the project, that the height of the proposed structure was too high and thus inconsistent with abutting structures, had been addressed by subsequent changes to the design. She concluded that the Planning Board recommends approval of the site plan by A-Plus Construction Services Corporation, dated 3/21/22, and of the architectural plans by Bond Worthington Architecture, now dated 5/16/22, 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, and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Planning Board for review and approval.
2. 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; 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.

In regards to the first condition, Ms. Selkoe proposed that, because the Petitioner had already addressed the Planning Board's primary concern by reducing the proposed height of the garage, the condition could be revised to require the approval of the Assistant Director of Regulatory Planning.

Ms. Selkoe then reviewed the findings of the Building Department report. She stated that the Deputy Building Commissioner was supportive of the zoning, that the relief could be granted by special permit, that the Deputy Building Commissioner had no objections to granting such relief, and that, should the Zoning Board of Appeals grant the relief, the Building Commissioner would work with the Petitioner to ensure compliance with the Zoning Board, zoning By-law, and the building code.

In deliberations, Board Member Zuroff stated that the plan would improve the streetscape and aesthetics of the neighborhood while increasing the supply of housing. He concluded that the requested relief is fairly minor. Board Member Palermo concurred with Mr. Zuroff's statement, adding that the project would make the property more conforming and that it meets the requirements of **Section 9.05**. Chair Schneider concurred with Board Members Palermo and Zuroff.

The Board then determined, by unanimous vote, that the proposal met the requirements for a special permit for design review under **Section 5.09.2.A** and special permit relief, waiving the

provisions of Section 5.10 for minimum lot size, 5.20 for floor area ratio, 5.60 for side yard requirements, 5.60 for rear yard requirements and 5.91 for minimum usable open space requirements, pursuant to Sections 5.43 and 8.02, as applicable. The Board also determined by unanimous vote to grant special permit relief from the provisions of sections 6.01.2.A and 6.06.14.C, pursuant to Section 6.02.1.b, waivers to dimensional requirements for off-street parking.

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 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. 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 revised conditions:

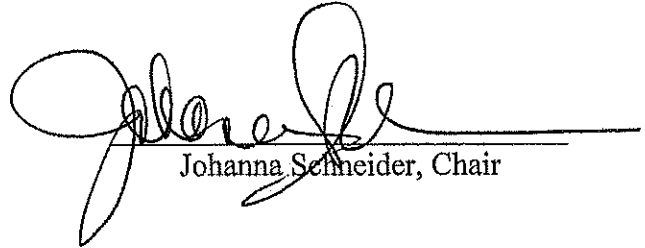
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Unanimous Decision of  
The Board of Appeals

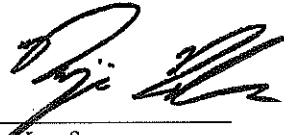
**JUN 14 2022**

Filing Date: \_\_\_\_\_



Johanna Schneider, Chair

A True Copy  
ATTEST:



Benjamin Kaufman  
Clerk, Board of Appeals