



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. 2022-0001  
320 TAPPAN STREET  
BROOKLINE, MA

Petitioners, Philippe and Michelle Schwartz, applied to the Building Commissioner for permission to convert a single-family dwelling into a four-unit dwelling at 320 Tappan Street. 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals, and fixed March 3, 2022, at 7:00 p.m. virtually as the 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 February 17, 2022, and February 24, 2022, 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: **320 Tappan Street**  
Petitioner: **Philippe & Michelle Schwartz**  
Zoning District: **M-2.0 Apartment House Zone**

Precinct: 12  
Description: Convert single-family dwelling to four-unit dwelling

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

Date: 3/3/22  
Time: 7:00 pm  
Location: Virtual Meeting (see below)

Register for this virtual hearing:  
<https://bit.ly/3oJySaS>

*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:

**§4.08 - AFFORDABLE HOUSING REQUIREMENTS**

**§5.05 - CONVERSIONS**

**§5.09.2.D – DESIGN REVIEW**

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

**§5.62 - FENCES AND TERRACES IN SIDE YARDS**

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

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

**§6.03 - LOCATION OF REQUIRED OFF-STREET PARKING FACILITIES**

**§9.13 – ONSITE-SITE FOSSIL FUEL FREE INFRASTRUCTURE**

**§8.02 - ALTERATION OR EXTENSION**

*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 Monique Baldwin ([mbaldwin@brooklinema.gov](mailto:mbaldwin@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: 2/17/2022 & 2/24/2022**

On April 14, 2022, the Brookline Zoning Board of Appeals held a virtual public hearing.<sup>1</sup> Present at the hearing were Zoning Board Chair Jesse Geller 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, Andrew Falkenstein, Concise Design Group, 7 Kent Street, Brookline, Massachusetts. The Petitioners, Michelle and Philippe Schwartz, were also in attendance.

Zoning Board of Appeals Chair Geller called the hearing to order at 7:00 pm. Chair Geller 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.

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<sup>1</sup> On March 3, 2022 at 7:00 p.m., the Board of Appeals continued 320 Tappan Street to April 14, 2022 at 7:00 p.m.

Attorney Allen presented the case for the Petitioners. Attorney Allen stated that the proposal is to convert the existing single-family home at 320 Tappan Street located in the M-2.0 Zoning District to a four-unit dwelling and added that the Petitioners' goal is to preserve as much of the interior and exterior of the existing building as possible with this conversion. He continued that instead of the conversion being a full "gut" renovation, the Petitioners have worked creatively to find ways to preserve the historic interior stairwell and other significant and interesting features unique to the building.

Attorney Allen stated that the Petitioners consulted with preservation staff to refine design details that would be historically appropriate for the windows and balconies and added that the Petitioners have agreed to replace the windows so that they match with the attached row house building. Attorney Allen continued that the proposal would also create outdoor space for the units with a roof top deck and exterior balconies.

Attorney Allen stated that the Petitioners reached out to the abutters and while there is support for the proposal, the immediate abutter shared some concerns regarding increased pedestrian traffic impacting the shared entryway. Mr. Allen stated that the underlying zoning allows for multifamily housing and added that the proposed four-unit building is consistent with the surrounding neighborhood. Attorney Allen continued that the Planning Board was unanimously supportive of the proposal and felt that the project was in line with town goals to add additional units within existing buildings. Attorney Allen then described how the four proposed units would be dispersed throughout the existing six floors and noted that each of the four units could potentially be suitable for families given their generous size between 950 and 1,300 square feet.

Attorney Allen then described the trash management plan for the building stating that the trash barrels are intended to be placed along the back wall inside of the existing garage in an alcove that would be excavated to provide enough space for the vehicles and receptacles.

Mr. Falkenstein presented the architectural drawings and noted that the existing building is four stories from Tappan Street but has two substories as viewed from the rear of the building. Mr. Falkenstein described the access into the units, reviewed the proposed roof deck, and described the exterior changes proposed to match the other attached row buildings. He noted that the exterior of the existing building will remain largely the same.

Upon inquiry from Board Member Wishinsky, Mr. Falkenstein described the solution for the trash management by making the garage an extra three-feet deep to provide space for the garbage cans.

Attorney Allen then reviewed the requested zoning relief for the conversion of the building, stating that special permits were sought under **Section 5.09** for design review, **Section 5.05** for the conversion from a single-family to a four-unit building, **Section 6.03.1.b** to allow two of the required four parking spaces to be off-site and added that there are two parking spaces at Regent Circle that are deeded to the property. Attorney Allen continued that relief is requested under **Section 5.43** for the proposed deck on the roof. He stated that the additional landscaping and building improvements would serve as the counterbalancing amenity for the requested side yard setback relief.

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 M-2.0 Multifamily zoning district and the proposed use of four units is an allowed use and this type of conversion to increase density within existing buildings is encouraged in this district. 2) **Use will not adversely affect the neighborhood:** The conversion will have minimal to

no impact on the existing streetscape and the exterior changes that are proposed will have a positive impact on the neighborhood and streetscape as they will improve the façade and bring it to be more consistent with the attached buildings. 3) No nuisance or serious hazard to vehicles or pedestrians: The existing garage will be continued to be used to park two cars and there are two additional parking spaces deeded to the building. 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. This project would provide a cash payment to the Town's Housing Trust.

Chair Geller then called for public comments in favor of the proposal. No comments were submitted in support of the proposal.

Chair Geller then called for public comments in opposition to the proposal. No comments were submitted and no one spoke in opposition. However, a letter received from an abutting property owner in opposition was entered into the record.

Chair Geller then called upon Maria Morelli, Senior Planner, to deliver the reports of the Planning Department and Board:

## **FINDINGS**

### **Zoning Relief Needed**

Section 4.08, Affordable Housing Requirements: The proposal results in a building that, upon completion, will have four or more units and the applicant is therefore required to provide on-site affordable units or make a payment into the Housing Trust Fund.

Section 5.05, Conversions: This section requires that all conversions that create additional dwelling units must conform to the dimensional requirements of Table 5.01. However, the Zoning Board of Appeals may waive any of those requirements (except minimum lot size) by special permit provided that no such nonconformities are increased. In this case, the floor area ratio, height, side yard setbacks, and the front yard setback are not met.

Section 5.62, Fences and Terraces in Side Yards: This section prohibits decks and patios 3 feet above the ground level to be located less than 50% of the required setback distance (but in no case closer than 6 feet. Both the patio above the detached garage and the rooftop deck encroach into the required setback area by more than 50% of the required side yard setback. Relief from this requirement can be granted through Section 5.43 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.

Section 6.03.1.b, Location of Required Off-Street Parking Facilities: This section states that the ZBA can grant a Special Permit for off-site parking facilities if the parking is within 400 ft. of the property and is secured by bond or other assurance of permanence as it may deem adequate. An easement is established allowed the residents of 320 Tappan Street to parking off-site at a location within 240 feet.

Sections 5.09.2d, Design Review: This project requires design review because it proposes the construction of "*attached dwellings in groups of three or more*". The applicant has submitted an Impact Statement that explains how the project addresses the Community and Environmental Impact and Design Standards.

~~Section 9.13, On-Site Fossil Fuel Infrastructure: As a substantial renovation that requires a Special Permit, this project is subject to Section 9.13. The applicant has submitted a signed and stamped statement confirming that the project will be designed and constructed to be fossil fuel-free in accordance with the definition from Section 9.13. This section of relief is no longer applicable as the Attorney General recently disapproved the Fossil Fuel Free Zoning By-Law Amendment passed by Town Meeting.~~

#### **PLANNING DEPARTMENT COMMENTS**

Ms. Morelli stated that the Planning Department is supportive of this proposal and added that this renovation will add three housing units while preserving a historically significant structure that defines the character of this portion of Tappan Street. She noted that the renovation produces modestly sized units and improves landscaping and site design and the project may also produce a fossil-fuel-free building. Therefore, Ms. Morelli stated that planning staff commends the applicant and recommends approval.

#### **PLANNING BOARD COMMENTS**

Ms. Morelli stated that the Planning Board recommends approval of this request to convert a single-family townhouse to a four-unit dwelling. She added that the Planning Board is supportive because the housing supply will be increased and a cash payment made to the Affordable Housing Trust, while at the same time preserving the historic character of the building. She noted that an abutter expressed concern about the storage of trash containers, and

the applicant's attorney said his client would work with the abutter to resolve any concerns, where possible.

Therefore, Ms. Morelli stated, the Planning Board voted unanimously to recommend approval of the site plan by Peter Nolan & Associates LLC, dated 10/12/21 and architectural plans by Andrew Falkenstein, dated 11/24/21, **the Planning Department recommends 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 Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a trash storage plan and a landscape plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be executed in accordance with the approved plan.
3. In accordance with Section 4.08 of the Zoning By-law and guidelines regarding "Cash Payments in Lieu of Affordable Units", 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 2% 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" effective November 18, 2021 and Approved by the Brookline Planning Board, January 7, 2021) provided to the Town of Brookline in the form of a bank check, certified check or a check drawn on an 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.*

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; 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 Paul R. Campbell, Deputy Building Commissioner, to deliver the findings of the Building Department. Mr. Campbell suggested that the Board of Appeals consider referring the review and approval of the trash management to the Health Department. He then stated that the Building Department concurred with the Planning Board analysis and added that should the Board grant the requested relief, the Building Department would work with the Petitioners to ensure conformance with the Board's decision and all applicable building codes.

In discussion, Board Member Zuroff stated that he supported the preservation of the historic structure and was supportive of granting the requested relief. He commended the execution of the project to add units and noted that the counterbalancing amenities proposed were sufficient under Section 5.43 and met the requirements of Section 9.05 of the Zoning By-Law. Board Member Wishinsky concurred. Chair Geller agreed with Board Members Zuroff and Wishinsky and added that the requirements under Sections 9.05 and 5.43 of the By-Law were met.

The Board then determined, by unanimous vote, to grant a special permit under Section 4.08 Affordable Housing, 5.05 Conversions, and 5.09.2.d Design Review pursuant to the requirements of said Section 9.05. The Board additionally granted a special permit under said

**Section 9.05** to waive the provisions of **Section 5.62** for side yard setbacks pursuant to **Section 5.43** of the Zoning By-Law.

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 revised 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 Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be executed in accordance with the approved plan.
3. Prior to the issuance of a building permit, the applicant shall electronically submit a trash storage plan subject to the review and approval of the Health Department with final review and approval by the Assistant Director for Regulatory Planning.

4. In accordance with Section 4.08 of the Zoning By-law and guidelines regarding “Cash Payments in Lieu of Affordable Units”, 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 2% 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” effective November 18, 2021 and Approved by the Brookline Planning Board, January 7, 2021) provided to the Town of Brookline in the form of a bank check, certified check or a check drawn on an Attorney Client’s Fund Account, payable to the Brookline Housing Trust.*

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

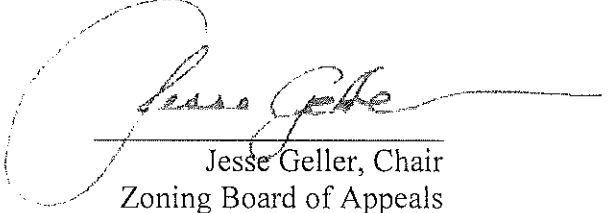
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*Prior to the issuance of a building permit, the owner shall execute a mortgage, escrow agreement, letter of credit or other documentation approved by the Director of Planning and Community Development to secure the cash payments required by this condition.*

5. 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.

Unanimous Decision of  
The Board of Appeals



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Jesse Geller, Chair  
Zoning Board of Appeals

Filing Date: JUN 23 2022

A True Copy  
ATTEST:



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Benjamin Kaufman  
Clerk, Board of Appeals