



Town of Brookline Massachusetts

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BOARD OF APPEALS
Jesse Geller, Chair
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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 022-000023
1906 BEACON STREET

Petitioner, 1906 Beacon Street LLC, applied to the Building Commissioner for permission to convert an existing four-family dwelling into seven units. 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: 1906 Beacon Street LLC **Address:** 1906 Beacon Street

Zoning: M-1.5 **Precinct:** 13

Description: Convert existing three-family dwelling to 7 units

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):

§4.08 - AFFORDABLE HOUSING REQUIREMENTS

§5.05 - CONVERSIONS

§5.20 - FLOOR AREA RATIO

§5.90 - MINIMUM LANDSCAPED OPEN SPACE

§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

§8.02 - ALTERATION OR EXTENSION

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

Mark Zuroff

Johanna Schneider

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

On April 28, 2022, the Zoning Board of Appeals held a public hearing. Present at the hearing were Chair Johanna Schneider and Board Members Mark Zuroff and Neil Wishinsky. The Zoning Board of Appeals voted unanimously to continue the matter of 1906 Beacon Street, Case #2022-0023, to June 23, 2022, without discussion.

On June 23, 2022, the Zoning Board of Appeals held a virtual public hearing. Present at the virtual hearing were Chair Jesse Geller and Board Members Randolph Meiklejohn and Neil Wishinsky. The case was presented by the attorney for the Petitioner, Jennifer Dopazo Gilbert, RLAW P.C., 300 Washington Street, First Floor, Brookline, Massachusetts. Also in attendance were representatives of the Petitioner, Nancy Farrow and Jim and Pam Sullivan, and the project architect, Devin Riley-Marini, Choo Design Architects, 1 Billings Road, Quincy, Massachusetts.

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 Dopazo Gilbert waived a reading of the published notice.

Attorney Dopazo Gilbert presented the case for the Petitioner stating that the property located at 1906 Beacon Street is in an M-1.5 zoning district and that the Petitioner is proposing the conversion of the existing four-family dwelling into a seven-unit building. Attorney Dopazo Gilbert continued that the lot has a total area of 4,097 square feet and that no exterior modifications are proposed. Attorney Dopazo Gilbert added that trash would be removed from the property at least as frequently as required by the Public Health Commissioner.

Attorney Dopazo Gilbert then stated that all of the requested relief could be granted by special permit. She stated that a special permit is needed under **Section 4.08** to comply with affordable housing requirements. Attorney Dopazo Gilbert continued that the Petitioner will provide a cash payment to the Housing Trust and added that Senior Housing Planner, Virginia Bullock, included in the Planning Department report a recommended condition that would meet the requirements of the By-Law. She continued that because the proposal is a conversion that creates additional dwelling units, a special permit is necessary under **Section 5.05** to maintain existing dimensional nonconformities for floor area ratio under **Section 5.20**, usable landscaped

open space under **Section 5.90**, and usable open space under **Section 5.91**. She further stated that relief was needed from the required off-street parking requirements (from three of the minimum seven parking spots) required by **Section 6.02.1.A**. Attorney Dopazo Gilbert concluded that the proposal also required a special permit under **Section 8.02** for the alteration of a nonconforming structure.

Ms. Riley-Marini then presented the architectural and site plans to the Board. In reliance on a digital presentation, she stated that the project, without making any external modifications, would convert the existing four-unit structure into seven units. Ms. Riley-Marini noted that an existing trash shed near the parking area will be improved and continued that the layouts for the second and third floors were identical to that of the first floor, aside from the addition of an office in the spaces above the first floor's common entry.

Board Member Meiklejohn asked Ms. Riley-Marini whether the proposed basement-bedroom's existing windows are above-grade and compliant with the Building Code for ingress and egress. Ms. Riley Marini responded that the windows are above-grade and would be compliant. Board Member Meiklejohn then inquired into the plans for the existing second-floor porch space. Ms. Riley Marini responded that the existing space is closed-in and would be converted into a common family area.

Upon inquiry from Board Member Wishinsky, Attorney Dopazo Gilbert addressed the parking requirements for 1906 Beacon Street, noting that the new parking By-Law, **Section 6.02.1.A**, while under the review of the Attorney General, allows the Zoning Board of Appeals to waive by special permit part or all of the parking requirements. She continued that the Board may grant such relief if it finds that the reduction accomplishes one of the criteria provided in **Section 6.02.1.B** of the Zoning By-Law.

Attorney Dopazo Gilbert then stated that the Petitioner's property is located in the TPOD because it is 135 feet from the Cleveland Circle MBTA C-Line stop, and that the reduction would accomplish at least one of the exceptions under **Section 6.02.1.B**. Specifically, Attorney Dopazo Gilbert noted that reducing the minimum space requirement would accomplish the creation of additional dwelling units that would be allowed under the existing zoning, except for the lack of available parking under the current regulations, and also the proposal promotes the preservation of an historic building. She noted that Beacon Street is on the National Registry of historical places and the conversion would preserve the exterior of the existing historic building. Board Member Wishinsky responded that the granting of a special permit also requires a finding by the Board that the reduction would not adversely impact the neighborhood. Attorney Dopazo Gilbert opined that the lack of on-site parking and the building's proximity to the Green Line would be such that the units would unlikely be appealing to car owners. She further opined that including seven parking spots would likely have a more detrimental impact on the neighborhood than reducing the parking requirement.

Attorney Dopazo Gilbert 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 site is appropriate for the proposed use, as multi-family dwellings are a permitted use in M-1.5 districts, while the existing structure is surrounded on both sides by other multi-family rowhouses. 2) Use will not adversely affect the neighborhood: The proposal will create additional modest-sized units, all within the same footprint and without exterior modifications. 3) There will be no nuisance or serious hazard to vehicles or pedestrians: The property's on-site circulation will not cause a nuisance or serious hazard to vehicles or pedestrians, as there is no change planned to the existing four parking spaces. 4) Adequate and appropriate facilities will be provided for the proper operation and proposed use: A trash shed will be improved to store additional waste and trash pick-

up will be by a private hauler, approval for which is required from the Health Department. 5) There will be NO effect on the supply on housing available for low and moderate income people.

Consistent with the Town's housing production goals, the proposal will increase the number of available modest-sized units in an area near public transportation networks. Moreover, the Petitioner will make a significant cash payment to the Affordable Housing Trust for the future development of affordable housing.

Chair Geller then for the difference in the bedroom count between the number existing and the number proposed. Ms. Riley-Marini responded that the existing structure contains fifteen bedrooms and the proposal calls for ten bedrooms, a net reduction of five bedrooms. Chair Geller then asked whether the gross floor area is to be increased. Ms. Riley-Marini responded that the design would preserve the existing structure's gross floor area.

Noting that letters both against and in favor of the proposal had been submitted to the Board, Chair Geller called for public comments in support of the proposal.

Lisa Shatz, 252 Summit Avenue, stated that she was in favor of the project because it would provide much needed housing in the greater-Boston area and supported housing for all ages of people.

Mr. Geller called for comments in opposition to the proposal. No comments were submitted.

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

FINDINGS

Section 4.08, Affordable Housing Requirements: Where a new building, addition, or conversion proposes 4 or more units, affordable housing contributions must be provided according to the number of new units being created. In this case, 3 new units are being created.

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. Because the conversions create additional dwelling units that do not conform to dimensional requirements of

Table 5.01, a Zoning Board of Appeals waiver of those requirements by special permit is required, and which may be granted as long as: minimum lot size conforms, and no such nonconformities are increased. This project contains three such nonconformities: FAR (1.83 v. 1.5 allowed), Landscaped Open Space (9% v. 10% required), and Usable Open Space (0% v. 15% required).

Section 6.02.1.A, General Regulations Applying to Required Off-Street Parking Facilities:

This section states that when a structure is converted for one or more additional dwelling units and the conversion results in an increased parking requirement, the Zoning Board of Appeals may reduce or eliminate the minimum number of parking spaces required by Special Permit. The project requires 7 spaces and only 4 are provided.

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 the Planning Staff is supportive of the proposal as conversion of the building to add residential units is a reasonable change in the use of the property and creates additional housing in a neighborhood that can support it. Ms. Morelli continued that the units that are being proposed are all modest in size and therefore can be expected to be more affordable than typical market-rate units. She concluded that the project requires a Special Permit to reduce the minimum parking requirement and that staff believes that the request can be granted on several grounds, including the first counterbalancing amenity under Section 6.02.1.b.

PLANNING BOARD RECOMMENDATION

Ms. Morelli stated that the Planning Board is supportive of the proposal. She noted that the Board supports the concept of renovating the interior layout to produce a greater quantity of units and feels that the proposed unit sizes will be appropriate for young professional couples and small families who want to establish themselves in Brookline. Ms. Morelli continued that the Board raised some concerns about whether the proposal meets AAB requirements but recognizes that compliance will be assessed at the Building Permit stage of permitting. She added that the Board heard concerns from abutters about how the proposal could affect the character of the neighborhood and concerns related to construction activity, and that the submission of a construction management plan is therefore recommended.

Ms. Morelli stated that the Planning Board, therefore, recommends approval of the site plan by DeCelle-Burke-Sala & Associates, Inc., dated 11/23/21, and architectural plans by Choo & Company, Inc., dated 3/7/22, 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 Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a construction management plan to the Building Commissioner for review and approval.
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. A sum equal to 1.5% 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 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
 - b. 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”
 - c. 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 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 Petitioner to ensure conformance with the Board's decision, the Zoning By-Laws, and all applicable building codes.

In discussion, Chair Geller stated that the proposed use was an allowed one in the district and that the other relief required special permit review under the standards of **Section 9.05**. Board Member Meiklejohn stated that he concurred with Chair Geller's comments, noting that his concerns about the adverse impact of parking on the neighborhood was mitigated by the proximity to the MBTA C-Line, the preservation of the building's exterior features, the reduction in the total number of bedrooms, and the creation of additional affordable housing by way of a payment to the Housing Trust. He continued that he believed the proposal met the special permit requirements of **Section 9.05** and that he would, therefore, vote in favor of granting special permit relief under **Sections 5.05, 8.02, and 6.01.2.A**.

Board Member Wishinsky concurred with Chair Geller, noting that the location was as suitable as any for reduction of a parking requirement under **Section 6.01.2.A**. Board Member Wishinsky subsequently inquired into the availability of bicycle parking facilities, noting that, like the parking reduction By-Law, the minimum requirement for the availability of bicycle parking was under review by the Attorney General. Attorney Dopazo Gilbert responded that the Petitioner was agreeable to conditioning approval of a future building permit on the submittal of a plan showing the inclusion of bicycle parking facilities on the property. Board Member Wishinsky responded that with the aforementioned condition included, he was prepared to grant the requested relief.

Chair Geller, in regard to the bicycle parking requirement mentioned by Board Member Wishinsky, then inquired into the minimum space requirement. Upon inquiry from Chair Geller, who asked if there was a minimum number of bicycle spaces, Ms. Morelli stated that the recent

By-Law passed by Town Meeting requires 1.1 parking spaces per dwelling unit, and stated that the Board of Appeals may reduce the requirement by half if units are being added within an existing building. Attorney Dopazo Gilbert stated that the proposal will comply with the newly approved By-Law. Ms. Morelli then clarified that if there are seven units 1.1 bicycle spaces would be required and therefore eight spaces would be required, however, this could be reduced to four spaces by special permit. Attorney Dopazo Gilbert stated that the applicant was only adding 3 new units. Ms. Morelli stated that it was irrelevant that there were four existing units and clarified the bicycle calculation is on the total number of units. Attorney Dopazo Gilbert confirmed with the architect that four bicycle spaces are proposed to be added to the basement.

Chair Geller then stated that his decision required weighing the impacts of reducing the minimum automobile parking requirement and preserving the building's historic significance, as well as the adequacy of bike parking. Ms. Morelli added that the By-Law required not less than four long-term bicycle parking spots, a number that Ms. Riley-Marini said the structure could accommodate. Board Member Wishinsky stated that he was in favor of granting the reduced bike and automobile parking requirements.

Chair Geller commented that the proposed conversion from four to seven units would not adversely impact the other rowhouses along Beacon Street and added that, it is true that, as one moves further away from Beacon Street in Brookline, larger housing units become more prevalent. He then stated that his review of whether there will be nuisance or serious hazard to vehicles or pedestrians, in this case should be determined within the context of accommodations for parking and trash. Chair Geller continued that the former had already been addressed by the Board's imposition of the new condition for bicycle parking, but that he would feel more comfortable regarding the latter by adding another condition.

After discussion, Attorney Dopazo Gilbert made no objection to including a new condition that prior to the issuance of the building permit, the applicant shall submit a trash plan subject to review and approval by the Public Health Commissioner.

Chair Geller stated that with the revised conditions, he was also prepared to vote that the requirements of **Section 9.05** had been satisfied and to grant special permits to waive the conversion dimensional requirements of **Section 5.05**, to continue preexisting dimensional nonconformities for floor area ratio, usable landscaped open space, and usable open space under **Section 5.20**, **Section 5.90**, and **Section 5.91**, respectively, to alter a preexisting nonconforming structure pursuant to **Section 8.02**, and to reduce the minimum automobile parking requirement of Section **6.01.2.A**.

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 deliberations:

- 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:

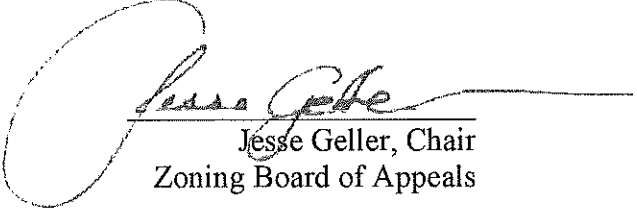
1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations, stamped and signed by a registered architect, and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a

construction management plan to the Building Commissioner for review and approval.

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. A sum equal to 1.5% 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 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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 - b. 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”
 - c. 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; 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.
5. Prior to the issuance of a building permit, a plan, showing the exact location of long-term bicycle parking facilities for not less than four (4) bicycles in compliance with the By-Law in effect, shall be submitted to, and subject to review and approval by, the Building Commissioner.
6. Prior to the issuance of the building permit, the applicant shall submit a trash plan subject to review and approval by the Public Health Commissioner.

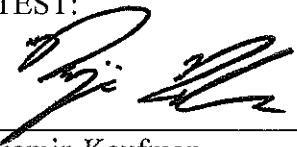
Unanimous Decision of
The Board of Appeals


Jesse Geller, Chair
Zoning Board of Appeals

Filing Date: 8/3/22

A True Copy

ATTEST:

A handwritten signature in black ink, appearing to read 'Benjamin Kaufman', written over a horizontal line.

Benjamin Kaufman
Clerk, Board of Appeals