



**BOARD OF APPEALS**  
Jesse Geller, Chair  
Johanna Schneider  
Lark Palermo

# *Town of Brookline*

## *Massachusetts*

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**Benjamin Kaufman, Clerk**

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2022-0054  
28-40 PARK STREET  
ASSOCIATED PROPERTY:  
54 AUBURN STREET

Petitioner, 28 Park Street, LLC, applied to the Building Commissioner for permission to convert a three-bedroom unit to (2) one-bedroom units, convert a parking space to bicycle parking, to create (2) EV Parking spaces and to modify Board of Appeals Case #1521. 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 December 8, 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 November 24, 2022, and December 1, 2022, in the Boston Globe, a newspaper in general circulation in Brookline. A copy of said notice is as follows:

TOWN OF BROOKLINE – Zoning Board of Appeals  
NOTICE OF HEARING

The Brookline Zoning Board of Appeals will hold a public hearing on

Date/Time: Thursday, December 8, 2022

Location: Virtual Hearing

Virtual Registration Link: <https://bit.ly/3UKn9Xo>

Petitioner: 28 Park Street LLC

Address: 28 Park Street

Subject: Convert (1) three-bedroom unit to (2) one-bedroom units, conversion of parking space to bicycle parking and the creation of (2) EV Parking spaces and modification of BOA Case #1340 and #1521

Nature of Action/Relief:

§6.01.2.A – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES; §6.02.1.B – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES; §6.02.2.H – OFF-STREET PARKING SPACE REGULATIONS ; §8.02 - ALTERATION OR EXTENSION

*Plans and submissions may be viewed online at*

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

*Interested persons may provide comments at the public hearing or by submitting written comments by email to [manthony@brooklinema.gov](mailto:manthony@brooklinema.gov).*

*Assistive Listening Devices are available upon request:*

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

Publish: 11/24/2022 & 12/1/2022

On December 8, 2022, the Zoning Board of Appeals held a virtual public hearing. Present at the hearing were Chair Jesse Geller and Board Members Randolph Meiklejohn and Saul Feldman. 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, Justin Boucher, Cube3, 370 Merrimack Street, Lawrence, Massachusetts.

Zoning Board of Appeals Chair Geller called the virtual 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.

Attorney Allen presented the case for the Petitioner stating that the subject property, 28-40 Park Street, is located in the M-2.0 Multifamily Zoning district, was constructed in 1925, and is off Washington Street and Harvard Street. He continued that the proposal is to 1) convert an

existing three-bedroom unit to two one-bedroom units; 2) convert a parking space to space for twenty-four bicycle parking; and to create EV Parking spaces that would provide power to a total of four cars. He stated that there are an existing eighteen spaces outside of the building with nine spaces under the building and that under Zoning Board of Appeals Decision # 1521 the petitioner is obligated to have an additional eleven (11) parking spaces at an off-site lot. He added that while the building has a surplus of parking spaces, it has a dearth of bicycle spaces. Attorney Allen continued that part of the request is for parking relief to waive nineteen parking spaces and to accordingly modify Board of Appeals decision #1521, decided in 1971.

Attorney Allen stated that the proposal triggers application of the Affordable Housing By-Law the petitioner would provide a payment to the Town's Housing Trust. He continued that the proposal has no impact to the existing streetscape and therefore creates no new shadow impact, viewshed issues, or privacy concerns to abutters. He added that the provision of EV parking spaces and bicycle parking spaces are consistent with the Town's goal to reduce its carbon footprint.

Attorney Allen referenced Warrant Article #23 from November Town Meeting 2021 that amended **Section 6.01 2. a**, to provide:

When a structure is converted for one or more additional dwelling units and the conversion results in an increased parking requirement, parking requirements for the entire structure shall be provided in accordance with the requirements in **Section 6.02** and **Section 6.05**. However, the Board of Appeals by special permit under Article IX may reduce or eliminate the minimum number of parking spaces required under **Sections 6.02** and **6.05**.

He noted that, since the building was being converted to add one additional unit, the Zoning By-Law now requires compliance with the parking under the existing requirements. He stated that the

existing parking by-law would require forty-five parking spaces and represented that there are twenty-seven parking spaces on site. He continued that the Petitioner is requesting a waiver of a total of nineteen parking spaces, which the Board of Appeals may undertake by special permit under **Section 6.01.2.a** of the Zoning By-Law.

On inquiry of the Board Members, it was clarified that the waiver request included waiving the eleven off-site parking spaces that were required in Board of Appeals Decision #1521 at property located at 54 Auburn Street (Parcel ID 170-03-00), and that any condition requiring parking for 28-40 Park Street at 54 Auburn Street would be superseded by this Board of Appeals decision.

Attorney Allen added that the conversion of the existing parking space to add twenty-four bike parking spaces; the addition of four parking spaces to have access to EV charging; and the affordable housing payment are appropriate and proportionate to the reduction in parking requested.

Mr. Allen then reviewed the Special Permit standards enumerated in **Section 9.05** of the Zoning By-Law noting the following: 1) Specific site is an appropriate location for such use: 28-40 Park Street is one-half mile from the MBTA subway; 2) Use will not adversely affect the neighborhood: The reduced parking is offset by public transit nearby and bicycle parking is provided to encourage alternate modes of transit.; 3) No nuisance or serious hazard to vehicles or pedestrians: There are no significant changes to the parking and the removal of the existing parking space would not create a hazard for vehicles or pedestrians; 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; a payment will be made to the Town's Housing Trust.

Chair Geller then called for public comments in support of or in opposition to the Proposal.

No comments were submitted.

Chair Geller then called upon Planner and Zoning Coordinator, Madison Anthony to present the Planning Board report.

**FINDINGS**

- §4.08 – AFFORDABLE HOUSING REQUIREMENTS
- §6.01.2.A – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES
- §6.02.01 – OFF-STREET PARKING SPACE REGULATIONS
- §8.02 - ALTERATION OR EXTENSION

ZONING: M-2.0	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Off-street Parking	45 spaces	27 spaces	26 spaces	<u>Special Permit</u> <sup>1</sup>

<sup>1</sup> According to §6.01.2.A amendment approved by the Attorney General on 9/21/22, the Board of Appeals, by special permit under Article IX, may reduce or eliminate the minimum number of parking spaces required under §6.02 and §6.05.

Section 8.02 – A special permit may be granted for Alterations or Extensions of a Non-conforming Structure.

Section 4.08.3.a – As a condition to granting any special permit for projects that, upon completion, will have four or more dwelling units and at least one new unit will be created, applicants should comply with the Affordable Housing Requirements under §4.08.

**PLANNING DEPARTMENT STAFF COMMENTS**

Ms. Anthony stated that the Planning Department Staff is supportive of this proposal. She continued that the proposed conversion of one apartment into two will add one more unit to the property without creating significant changes to the building or generating a negative impact to the surrounding neighborhood. Despite eliminating one parking space, she noted, the added bike and EV charging spaces will provide residents with safe sheltered spaces for bicycle storage and

the opportunity to charge hybrid or electric vehicles. She stated that this change furthers the Town's goal to reduce the carbon footprint and meet its Climate Action goals.

### **PLANNING BOARD COMMENTS**

Ms. Anthony stated that the Planning Board was supportive of subdividing one large unit into two, which in addition to providing an additional housing unit, would trigger the requirement for an affordable housing payment to the Housing Trust Fund. She continued that the Planning Board agreed with the Planning Department that adding bike and EV charging spaces was a benefit to the Town since it would further its climate action goals. She stated that the Planning Board, however, had one non-zoning recommendation that the interior circulation of the units be improved, and the applicant's attorney said they would explore this.

The Planning Board voted to recommend approval of the architectural plans by CUBE 3 Studio LCC, dated 6/10/22, with 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 certificate of occupancy, the applicant shall comply with the Affordable Housing requirements 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, with the choice of the applicant to make a cash payment in lieu of providing affordable units.
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, 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.

Attorney Allen requested that condition #1 be modified to remove the requirement for elevations.

Chair Geller then called upon Ms. Anthony to deliver the findings of the Building Department. Ms. Anthony stated that the Building Department had no objections to the requested relief 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 deliberation, the Board Members agreed that plans showing elevations were not required in this case and the Board Members discussed the need for a site plan delineating all legal parking spaces as a condition of relief.

Chair Geller stated that sufficient testimony was provided to establish that the parking demand is more than adequately satisfied to enable reducing the parking. He added that the Zoning By-Law's approach to parking, has changed to require less parking, and bicycle parking will be provided. Chair Geller did not anticipate any negative impacts to the neighborhood and was in support of granting the requested modification of the prior Zoning Board of Appeals decision (#1521) and parking waiver of nineteen spaces, which would thereby remove the requirement to have parking spaces off-site. Board Member Meiklejohn concurred and was supportive of the requested special permit relief. Board Member Feldman stated that he was in support and thought it was a great benefit for the town.

The Board then determined, by unanimous vote, that the proposal met the requirements for a special permit granting relief from application of the provisions of **Section 6.02 2. i** pursuant to **Section 6.01.2.a** 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 deliberations:

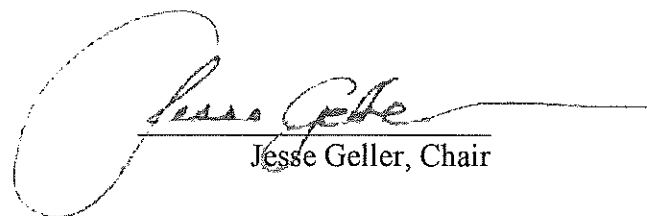
- a. The specific site is an appropriate location for such a use, structure, or condition.

- 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 negative effect on the supply of housing available for low- and moderate-income people since a payment will be made to the Town's Housing Trust.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following revised conditions:

1. Prior Zoning Board of Appeals decision #1521 is modified by waiving the requirement of off-street parking at 54 Auburn Street for the benefit and use of 28 – 40 Park Street (and shall otherwise remain in full force and effect as originally filed and previously amended of record).
2. 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 that delineates the parking spaces, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to the issuance of a certificate of occupancy, the applicant shall comply with the Affordable Housing requirements 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, with the choice of the applicant to make a cash payment in lieu of providing affordable units.
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, 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



Zoning Board of Appeals

Filing Date: 1/18/2023

A True Copy  
ATTEST:



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Benjamin Kaufman  
Clerk, Board of Appeals