



# *Town of Brookline*

## *Massachusetts*

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

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**Benjamin Kaufman, Clerk**

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2022-00040  
55 GREEN STREET

Petitioner DND Homes applied to the Building Commissioner for permission to demolish a two-family dwelling and construct a new three-family dwelling. The application was denied and an appeal was taken to this Board.

The Board of Appeals 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 January 19, 2023, 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 January 5, 2023, and January 12, 2023, in the Boston Globe, a newspaper of 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, August 18, 2022**

**Location: Virtual Hearing**

**Virtual Registration Link: <https://bit.ly/3J7xgR6>**

**Petitioner:** 55 Green Street LLC

**Address:** 55 Green Street

**Subject:** Construct new three-family dwelling

**Nature of Action/Relief:**

§5.09.2.M – DESIGN REVIEW

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.50 - FRONT YARD REQUIREMENTS

*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: 8/4/2022 & 8/11/2022**

On February 2, 2023, the Zoning Board of Appeals held a virtual public hearing.<sup>1</sup> Present at the hearing were Chair Jesse Geller and Board Members Neil Wishinsky and Johanna Schneider. The case was presented by the attorney for the Petitioner, Robert Allen, Jr., RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance was Ender Saricay, on behalf of Petitioner DND Homes, and project architect Peter Quinn, Peter Quinn Architects, LLC, 259 Elm Street, Suite 301, Somerville, 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 Allen waived a reading of the published notice.

Attorney Allen presented the case for Petitioner stating that the property at 55 Green Street is located in the F-1.0 zoning district and neighbors 45 Green, an 18-unit apartment building, and 49 Green Street, a two-unit condominium which has included a large rear-addition since 2010. He continued that Petitioner was seeking permission to demolish the existing two-family dwelling and

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<sup>1</sup> The Board of Appeals continued 55 Green Street without testimony on 8/18/2022, 10/27/2022, 12/15/2022, 1/19/2023 to 2/3/2023. On 2/3/2023, the Board of Appeals opened the public hearing.

to construct a new three-family dwelling. Attorney Allen noted that dialogue with the neighborhood had started early and occurred regularly, with Petitioner responding to comments whenever and wherever possible, including for example abandoning a more modern design in favor of a more traditional design

Attorney Allen then stated that the proposal was submitted on May 23, 2022, and subsequently subjected to four Planning Board meetings, the earliest of which occurred in July. He continued that before finally receiving the unanimous support of the Planning Board, Petitioner received comments and critiques concerning the design and about different aspects of the project at each hearing, leading to the seven-month review process. Attorney Allen stated that the present application was an example of the design review process working as it should, with the result being an improved project and a greater benefit to the neighborhood.

Attorney Allen then reviewed the requested relief stating that the proposed FAR was 0.99, whereas a maximum of 1.0 is allowed in the F-1.0 district. Attorney Allen continued that the dimensional relief cited by the Planning Board in its report, including for front yard setback, was no longer needed, since, at the direction of the Planning Board, the project was modified such that as a result, Design Review under **Section 5.09** is the only zoning relief required and the project is otherwise entirely by-right. Attorney Allen emphasized that no trees would be removed in the course of the demolition or construction and that, in fact, existing asphalt at the rear of 55 Green Street would be replaced with greenspace. He further noted that Petitioner's design included a fossil fuel free building, with the demolition process likely to involve recycling initiatives to mitigate any impacts of waste. Attorney Allen continued that the new structure would also include three electric vehicle chargers and eight bicycle spaces in the garage.

Peter Quinn, the project architect, then presented the site plans to the Board. In reliance on a digital presentation, Mr. Quinn first displayed photos of the existing area, including one of 55 Green Street. He then reviewed the first iteration of Petitioner's design, noting that it included modern design features and three floors and that it had been met with significant opposition at a Planning Board hearing. Mr. Quinn subsequently reviewed the second and third iterations of the design, noting the changes that were made to massing and setbacks. He then reviewed the present design, emphasizing the inclusion of a mansard roof with a noticeable slope and defined cornice, both of which had been approved by the Planning Board. Mr. Quinn, displaying the elevation of the proposed structure, stated that it would serve as a transitional structure between the taller apartment building on one side and the much shorter condominium building on the other.

Mr. Quinn then presented a 3-D view of the front of the design, pointing out the proposed driveway on the building's left that would lead to a parking structure for six spaces. He added that the garage space had been designed to be consistent with its principal structure and that a landscaping architect would be enlisted to properly design a plan for the garage area. Mr. Quinn continued with a 3-D view of the proposal's rear, noting that the presence of multiple porches and a pergola structure contributed to the substantial outdoor space that would be available for occupants, all without the need for setback relief. He then displayed aerial views of the design, emphasizing the appropriateness of the proposed massing, design, and height of the structure with the surrounding area and concluded by referencing the proposed floor plan, noting that one dwelling unit would be contained on each of the three floors of the new structure.

Chair Geller then called for questions from the Board. Board Member Schneider inquired as to whether the design's inclusion of an elevator was necessary, given the resultant protrusion through the roof. Attorney Allen noted that the Planning Board had rejected the original location

of the elevator, with it having since been moved toward the center of the building. He further stated that the elevator would enable residents of all capabilities to live at the proposed building. Mr. Quinn added that when including the basement, a person living on the third-floor may have to traverse four stories, making the elevator a more sensible option. Board Member Schneider then inquired as to the uniformity of the materials on each side of the building, with Mr. Quinn responding that the materials were the same on all sides of the building. Board Member Schneider asked if any shadow studies had been undertaken.

Mr. Quinn, in response, reviewed Petitioner's shadow study, noting where existing and proposed shadow effects differed. He continued that, in Spring and Fall, the street would be the recipient of a new shadow in the morning and a slight sliver of shadow in the afternoon, while the evening would bring a slight shadow manifesting in the space between the building and 59 Green Street. Mr. Quinn then displayed the Summer shadow study, noting that almost all new shadows were confined to the lot at 55 Green Street, save a small one that would again occupy part of the space between the neighboring structure at 59 Green. Board Member Schneider remarked that the studies appeared to show that the shadow impact on other buildings would be minimal and asked whether a shorter building would cast a lesser shadow. Mr. Quinn responded that noticeable changes would only result from a substantial reduction in height, such as the loss of an entire story.

Board Member Wishinsky then asked for a review of the Winter shadow study. Mr. Quinn continued that a taller building on Pleasant Street would cast a shadow over the proposed building in the morning, that the street received a slightly increased shadow during the day, and that the building at 59 Green Street would receive some shadows in the evening.

Attorney Allen stated that, but-for Design Review required under **Section 5.09.2.m**, due to the property being within the Coolidge Corner Design Overlay District, the project was completely

compliant with the Zoning By-Laws. Attorney Allen, by way of background continued, that 55 Green Street was included in one of the Town's newer zoning districts, the F-1.0 district, which was created in 2007 and had originally included a maximum FAR of 0.75. Mr. Allen remarked that after extensive review during the Town's legislative and public review processes, the existing FAR for the district was approved, by more than 2/3 vote of the Town Meeting, with a maximum FAR of 1.0 reflecting the Town Meeting Members' belief that the area is suitable for three-family dwellings and increased density.

Attorney Allen then reviewed the requested zoning relief, and noted the following in regard to Design Review under **Section 5.09.4**: (a) Preservation of Trees and Landscape: All existing trees will be preserved in the rear yard, almost all of which is currently covered in asphalt that will be removed and replaced with landscaping; (b) Relation of Buildings to the Environment: The proposed development relates harmoniously to the terrain, trees, landscape, and natural features and in fact, enhances them; (c) Relation of Buildings to the Form of the Streetscape and Neighborhood: The standards for subsection (c) are, in the words of the By-Law, not inflexible. Rather, new buildings shall be consistent with scale, massing, and height of "all existing buildings that conform to the zoning by-law." The proposed development will be consistent with the use, scale, massing, height, yard setbacks, and architecture of existing buildings and the overall streetscape of the surrounding area, including existing abutting buildings. The new project is entirely dimensionally compliant, has been subject to review by the Planning Board on four different occasions, and is significantly smaller than the 9-story building to its rear, the 4-story apartment buildings on both ends of Green Street, and the four-story apartment building across the street;

Attorney Allen then stated that the proposed project also met all of the requirements for a special permit under **Section 9.05** of the Zoning By-Law, stating the following: 1) Specific site is an appropriate location for such use: The proposed three-story, three-family building is an allowed use and is in a residential neighborhood. The building will be appropriate with surrounding structures, including the abutting 2 ½-3 story building to one side, the 9-story apartment building to the rear, and the 4-story buildings on either end of the block and across the street. 2) Use will not adversely affect the neighborhood: The proposed building will be used as a three-family dwelling, whereas the existing building is used as a two-family. The project will also comply with setbacks and all other dimensional criteria and has received the unanimous support of the Planning Board. 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. The proposal takes advantage of an existing driveway, and six cars will be parked under the building, hiding them from view. A signal feature has already been added to the existing ramp to increase safety on site, and spots for eight bicycles will be provided, something not required for projects of this size. 4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use: Adequate and appropriate facilities will be provided for the proper operation of a three-family dwelling. 5) There will be NO effect on the supply on housing available for low and moderate income people: The proposal will provide an additional unit for the neighborhood.

Chair Geller then called for public comments in support of or in opposition to the proposal. Beatka Zakrzewski, 59 Green Street, spoke in opposition to the proposal and had concerns about the shadow impact. She concluded by noting her status as a Town Meeting Member and by stating that design was unsuitable, as there were surely ways to reduce the size of the proposal while maintaining its status as a three-family building.

Susie Roberts, 69 Green Street, commented that she was also a Town Meeting Member and had co-sponsored the bill that required design review for demolition of significant buildings. Ms. Roberts stated that she felt that the design was too big and that the review process was disingenuous for its failure to consider the so-called “five-house ensemble”. She concluded that the Board should request that the developer return with a design that would be smaller, something that she stated would be more appropriate for the neighborhood, albeit almost exclusively based on her consideration of the five-house ensemble.

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

**FINDINGS**

**Section 5.09.2.m, Design Review:** This project requires design review because it proposes the demolition of a building located in the Coolidge Corner Design Overlay District. The applicant has submitted an Impact Statement that explains how the project addresses the Community and Environmental Impact and Design Standards.

<i>F-1.0 three family</i>	<b>Required</b>	<b>Proposed</b>	<b>Finding</b>
<b>Front Yard Setback</b>	26.17 ft*	26.25 ft	Special Permit** Now Complies
<b>Side Yard Setback (L)</b>	10 ft	10.1 ft	Special Permit** Now Complies

\*Pursuant to **Sec. 5.54**, Exceptions for Existing Alignment: “in all Residence Districts, if the alignment of two or more existing buildings on lots on either or both sides of a lot fronting on the same side of the same street in the same block **is farther from the street than the required front yard depth, the average of the existing alignment of all buildings within 150 feet of said lot shall be the required front yard**, except that no front yard requirement resulting from the application of this section shall exceed twice the front yard requirement specified in Table 5.01.”

\*\* Under **Section 5.43**, the ZBA may waive the requirement for yard setbacks if counterbalancing amenities are provided.

**PLANNING STAFF COMMENTS**

**At its October 27<sup>th</sup> meeting, the Planning Board recommended denial of the plans for this new three-family dwelling due to its being oversized; box-like; having little articulation on the side facades; having an awkward mansard roof design; and an exterior elevator**



increasing the massing. The plans have now been significantly revised, including the following:

1. The elevator was moved into the building and the stair moved outside, substantially reducing the massing impact on the right hand side façade. (All floor plans have incorporated the change.)
2. A true mansard roof was created that steps in from the exterior wall 2’.
3. The entry was reworked in plan and elevation, including the stair configuration and the entry canopy.
4. The chimney was projected 2” to help breakup the length of the right hand side wall.
5. The width of the rear decks were reduced on the second and third floors to break up the length of the building.
6. The side trellis on the rear decks was eliminated to further reduce the impact of the decks on the massing.
7. The width of the pergola was reduced on the third floor deck.
8. The color of the trim was changed from moss green to brown.
9. The front facade was moved further from the street so that no zoning relief is now required for the front yard setback.

The Planning Department believes these are significant changes and that the design is much improved.

#### **PLANNING BOARD COMMENTS**

At its October meeting, the Planning Board felt that the building was still oversized and that it had a box-like appearance that did not fit with the character of the street. Those concerns were also shared by many abutters. Board members suggested minor and major modifications, including redesigning the mansard roof to a more traditional appearance, articulating the massing so it wouldn’t be so uniform, integrating the elevator into the building, and in general having more space for landscape, light, and air.

At the January 5<sup>th</sup> Planning Board meeting, the applicant showed plans that responded to the October 5<sup>th</sup> suggestions of the Planning Board and abutters in a meaningful way. The Planning Board was very pleased with the significant changes that were made by the applicant’s team, which included:

- Moving the elevator into the building and the stair outside, substantially reducing the massing of the building,
- Creating a true mansard roof by stepping it in from the exterior wall by 2’,
- Reworking the canopy and entry stair configuration,
- Projecting the chimney 2” from the right façade to break up its length,
- Reducing the width of the rear decks and eliminating the side trellises to minimize the appearance of the building length and massing,
- Reducing the width of the pergola on the third floor deck,
- Altering the color scheme and changing the trim from moss green to brown,
- Setting the front facade back from the street to conform to zoning.

The Planning Board felt that the design of the façade was now well-articulated and fit into

the context of the streetscape, although it was noted that nine out of the fourteen buildings on that portion of Green Street had completely different styles from each other. The Planning Board found that the proposed building was not more massive than the building to its left, although it did extend further into the rear yard, and the rear decks could be further reduced. Other than a special permit for design review, no other relief was needed.

The Planning Board also recommended that the number of trees shown in the rendering be required to help address the scarcity of trees in the area. Species and sizes should be detailed.

Therefore, the Planning Board recommended approval of the site plan by Paul Nolan & Associates dated 11/29/2022 and architectural plans by Peter Quinn Architects dated 11/29/2022, 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 landscape plan detailing species and sizes of plants, 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 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 had no objections to the requested relief 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 and all applicable building codes.

The Board then deliberated. Board Member Wishinsky stated that he was cognizant of the concerns expressed by abutters, but noted that the Board's review was limited in scope because 55 Green Street is not within a local historic district or similarly restricted area. He continued that the design review process had resulted in a number of favorable changes to the design, including

limiting the impact of shadows. Board Member Wishinsky concluded that he believed the proposal met the requirements for a special permit and voted in favor of granting the relief.

Board Member Schneider stated that she agreed with many of Board Member Wishinsky's comments, noting that she herself was sensitive to maintaining historic structures and, as a former resident of the area, was familiar with the five-house ensemble mentioned in public comments. She continued that the project had been thoroughly vetted by the Planning Board and that the preservation of historic structures is largely outside the Zoning Board of Appeals' jurisdiction. Board Member Schneider added that 55 Green Street stands on the edge of the five-house ensemble and that an argument could be made that a new structure, because it now abuts a denser, taller, larger, and more modern building, should serve as a transitional structure that mediates between the larger building and the smaller dwellings on the other side of 55 Green Street. She further stated that the Planning Board report noted that nine of fourteen buildings in this area of Green Street have differing styles from one another and that the shadow impacts were largely confined to the project site itself. Board Member Schneider thanked the applicant for their effort in creating a design that conformed so substantially to the Planning Board's feedback, stating that the Planning Board was the true design reviewing board of the Town. She concluded that she, like Board Member Wishinsky, would vote in favor of granting the requested relief.

Chair Geller stated that his comments would resemble those of Board Members Schneider and Wishinsky. He continued that the existing structure was likely once a single-family home and later transitioned to a two-family home, a process that would have caused significant shock to some who lived in the neighborhood at that time. Chair Geller noted that the site is a transitional location and that the structure could serve as a stepping stone, with the applicant, in his opinion, having made the Planning Board's decision a fairly straightforward one. He further stated that the

project met all the dimensional requirements of zoning and floor area ratio. Chair Geller added that to the best of his recollection, the only prior occasions on which the Zoning Board of Appeals had deviated significantly from a Planning Board recommendation, particularly one as thorough as this, resulted from circumstances where Board Members had significant misgivings about the proposal (since the Planning Board was charged with making a recommendation concerning design to the Zoning Board of Appeals). He continued that he saw nothing in the proposal and had heard nothing from other Board Members to suggest that such deviation was appropriate here, noting that the building was not protected as a historic structure and that, even if it had been, the Board had no ability to administer historic preservation. Chair Geller concluded by voting in favor of the requested relief.

The Board then determined, by unanimous vote, that the proposal, as required by **Section 5.09.2**, met the requirements for a special permit under design review pursuant to **Section 9.05**.

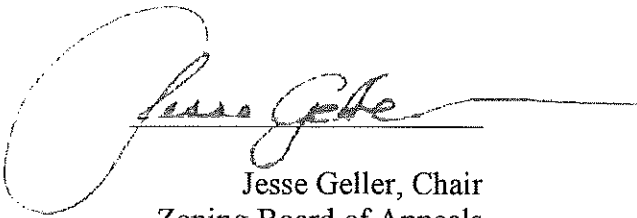
In addition, the Board made the following specific findings under **Section 9.05** based on the evidence submitted at the hearing and the Board's deliberation:

- 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 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 detailing species and sizes of plants, subject to review and approval by the Assistant Director for Regulatory Planning.
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.

Unanimous Decision of  
The Board of Appeals



Jesse Geller, Chair  
Zoning Board of Appeals

Filing Date: 2/23/2023

A True Copy  
ATTEST:



Benjamin Kaufman  
Clerk, Board of Appeals