



# *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. 2022-000074  
1726 BEACON STREET

Petitioner SLD 1726 Beacon, LLC applied to the Building Commissioner for permission to convert an attached single-family dwelling into a four-unit multi-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 February 16, 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 February 2, 2023, and February 9, 2023, in the Boston Herald, 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, February 16 2022

**Location:** Virtual Hearing

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

**Petitioner:** SLD 1726 BEACON LLC

**Address:** 1726 Beacon Street

**Subject:** Convert attached single-family dwelling into 4 unit multi-family dwelling

**Nature of Action/Relief:**

§4.08 - AFFORDABLE HOUSING REQUIREMENTS; §5.05 – CONVERSIONS; §5.09.2.D – DESIGN REVIEW; §5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS; §5.91 - MINIMUM USABLE OPEN SPACE; §6.04.5.B – DESIGN OF ALL OFF-STREET PARKING FACILITIES; §8.02 - ALTERATION OR EXTENSION

*Plans and submissions may be viewed online at*

*<https://www.brooklinema.gov/DocumentCenter/Index/3647>*

*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: 2/2/2023 & 2/9/2023**

On March 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 Paul Bell and Saul Feldman. 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 project architect Mariana Dagatti, MGD+, 411 Lexington Street, Newton, 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 1726 Beacon Street is located in the M-2.5 zoning district, near the Tappan Street T-stop. He continued that the area lies within a National Register District and that the building was constructed around 1920. Attorney Allen

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<sup>1</sup> The Board of Appeals continued 1726 Beacon Street without testimony on 2/16/23 to 3/2/2023. On 3/2/2023, the Board of Appeals opened the virtual public hearing.

stated that the proposal would convert the existing structure, measuring nearly 5,000 square feet, into four modest sized rental units ranging from 1,023 square feet to 1,406 square feet.

Attorney Allen then stated that the proposal, as desired by the Planning Board, would preserve a National Register building while increasing the Town's supply of reasonably priced and moderately sized rental units. He noted that 1726 Beacon Street, given its location near a MBTA-stop, is an ideal structure for increased residential density. He further stated that the present proposal was consistent with what was envisioned by the Town Meeting when it enacted a reduced parking requirement for properties within one-half mile of public transit. Attorney Allen stated that without this parking reduction, a variance would be required because providing the requisite eight parking spaces is not possible. He added that the proposal would also result in a cash payment to Brookline's affordable housing trust fund.

Attorney Allen then stated that, with the exception of a new entrance to the garden-level unit, there would be no exterior changes to the envelope of the building, with many of the interior features, such as window casings, molding, and the fireplaces, all being preserved. He continued that the present proposal would address all of these issues while providing new rental units, would comply with bike parking requirements and that parking for four electric vehicles would be provided at the rear of the building, where an area for snow removal would also be maintained.

Attorney Allen stated that the Planning Board had been very supportive of the project, though it had expressed concerns about the number of parking spaces. He continued that the Planning Board seemed to advocate for no parking at the property, but that the Petitioner and project architect felt that the four parking spots that have always existed in the property's rear yard should remain and continue to be utilized. Attorney Allen further stated that the proposal had addressed the Planning Board's concerns about trash and recycling by allocating an area large

enough for at least eight barrels, or two barrels of refuse per unit per week. Attorney Allen emphasized that the parking area was accessed by a rear alleyway that was rarely used by pedestrians and that, because of its narrowness, required traversing at slow speed.

Mariana Dagatti, the project architect, then reviewed the project with a digital presentation of the plans and elevations. Ms. Dagatti continued that the proposed structure would be entirely within the existing structure's footprint, with no exterior additions to be made, save the addition of an entrance for the lowest floor's unit. She then provided the site plans, identifying where the trash and recycling area would be located, and presented the turning analysis, adding that the parking spots existed for some time without apparent issue. Ms. Dagatti emphasized that the parking spots would be converted into electric vehicle parking, thereby reducing the already high demand for on-street parking.

Chair Geller then inquired as to the location of the trash and recycling area and asked for an explanation how it would be moved to the alley for pickup. Ms. Dagatti responded that the trash and recycling would have to be brought in between the parked cars in order to reach the alley. Responding to a follow-up question of Mr. Geller, Attorney Allen clarified that trash and recycling would be contained in small barrels, thus creating no need to move vehicles. Ms. Dagatti, responding to a question about the rear access, stated that a common staircase would provide access for all units, with an area for storage also being accessible.

Board Member Bell then inquired as to whether the Planning Board report was accurate insofar as no usable open space would be provided. Attorney Allen responded that because usable open space required a minimum dimension of 15 feet by 15 feet, the proposed green space constituted landscaped space, not usable open space.

Attorney Allen then reviewed the requested zoning relief stating that a special permit was required under **Section 4.08.3.a** of the Zoning By-Law\_(with the petitioner electing to make a payment). Attorney Allen stated that an impact statement, outlining how the proposal meets the requirements of **Section 5.09** of the Zoning By-Law and required due to the project’s location on Beacon Street, had been submitted to the Board. He added that the only exterior change consisted of the addition of an egress door, with the exterior to otherwise remain unchanged. Attorney Allen then stated that zoning relief was required, under **Section 5.05** of the Zoning By-Law, from the requirements for minimum usable open space. He reiterated that the proposed green space constituted only landscaped open space because it did not meet the dimensional requirements for usable open space. Attorney Allen further stated that relief was also sought from **Section 6.04.5.B** of the Zoning By-Law, which requires parking to be setback from the property line by five feet on the side and ten feet on the front—the alley in this proposal, Attorney Allen clarified. He continued that the project proposed no setback from the “front” property line and 2.75 feet and 0.3 feet for the two sides. Attorney Allen stated that the rear alleyway and its limited space is a common feature of Beacon Street and not unique to the present proposal. He noted that the property currently allows parking for four cars by-right, with snow regularly being deposited into the alleyway, which would be eliminated by the proposal’s dedicated snow area. Attorney Allen noted that relief from the parking setback requirements was available under **Section 5.43** of the Zoning By-Law, so long as an adequate counterbalancing amenity is provided to off-set the non-compliance. He noted that the proposed counterbalancing amenities consisted of landscaping and design improvements, including plantings and new greenery, and new pavers, a new trash and recycling area, and a new fence.

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 followings: 1) Specific site is an appropriate location for such use: The property is located in an M-2.5 Multifamily Zoning District, and the proposed use for four units is an allowed use. 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. In fact, the exterior changes will have a positive impact on the neighborhood. 3) There will be no nuisance or serious hazard to vehicles or pedestrians: The parking will exist largely as it has for many years, and the benefit of this site is that cars back into an alley and don't need to cross over a sidewalk. 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 multi-family dwelling. 5) There will be no effect on the supply on housing available for low and moderate income people: This project will result in two positives for affordable housing: Funding to the Town's housing trust for affordable housing, and the creation of four modestly sized apartment units.

Chair Geller then called for public comments in support of or in opposition to the proposal. No public comments were received.

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

**FINDINGS**

**§4.08 – AFFORDABLE HOUSING REQUIREMENTS**

**§5.05 - CONVERSIONS**

**§5.09.2.D – DESIGN REVIEW**

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

**§5.91 - MINIMUM USABLE OPEN SPACE**

**§6.04.5.B – DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**§8.02 - ALTERATION OR EXTENSION**

<b>ZONING: M-2.5</b>	<b>Requirements</b>	<b>Existing Conditions</b>	<b>Proposed Conditions</b>	<b>Relief Required</b>
<b>Usable Open Space</b>	5%	0%	0%	<b><u>Special Permit</u></b> <sup>1</sup>
<b>Parking Setback Steet lot line</b>	10'	≤ 2'*	0'	<b><u>Special Permit</u></b> <sup>2</sup>
<b>Parking Setback East/West</b>	5'	0 / ≤ 5'*	2.8'/0.3'	<b><u>Special Permit</u></b> <sup>2</sup>

<sup>1</sup> Under **Section 5.05 - Conversions**, this section requires that all conversions of a dwelling to create additional dwelling units conform with dimensional requirements of Table 5.01. However, the Board of Appeals may waive any of those requirements, except minimum lot size, provided that no existing nonconformity is increased and all other provisions of the Zoning By-law for such conversions are met.

<sup>2</sup> Under **Section 5.43, Exceptions to Yard and Setback Regulations**, a special permit may waive a yard setback if a counterbalancing amenity is offered. In this case, landscaping is being offered to serve as a counterbalancing amenity.

**Section 4.08.3.a, Affordable Housing Requirements** – 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**.

**Section 5.09.2.d, Design Review**: A Special Permit for Design Review is required for exterior alterations, additions, and modifications or changes to multiple dwellings with four or more units on the premises.

**Section 8.02, Alteration or Extension**: A special permit may be granted for Alterations or Extensions of a Non-conforming Structure.

\* The applicant was requested to provide exact setback dimensions of existing parking pad.

**PLANNING DEPARTMENT COMMENTS**

Ms. Anthony stated that the Planning Department Staff is pleased with this project, which will have little to no impact on the neighborhood while increasing the housing supply in Brookline. She continued that the proposed conversion will not create significant changes to the building envelope, with only minimal changes to the windows. Ms. Anthony noted that parking area is currently paved, and that no additional paving is required. She further stated that the building will also be made 100% fossil fuel free.

Ms. Anthony then stated that the Planning Board is largely supportive of the proposal. She noted, however, that the Board is concerned with how trash and recycling will be handled since the number of trash cans needed would increase considerably with three more units. Ms. Anthony continued that the provided parking arrangement with four spots would impose safety issues on

the narrow alleyway and leave no space for trash or snow storage. She further stated that the Board accordingly recommends approval with an additional condition to allow the applicant to address the aforesaid issues as described in condition number 3 below.

Ms. Anthony continued that therefore, the Planning Board recommended approval of the site plan by Peter Nolan & Associates LLC, PLS, dated July 5, 2022, and architectural plans by MGD+, LLC, dated June 22, 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 or designee for review and approval.
2. Should the applicant choose to keep four parking spaces, they shall submit turning diagrams and additional site plan information showing how trash, recycling, and bicycle storage are managed to the Assistant Director for Regulatory Planning or designee for review and approval. Alternatively, the Planning Board would recommend the granting of a special permit if the applicant chooses to reduce the number of parking spaces to three.
3. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan subject to approval by the Assistant Director for Regulatory Planning or designee. The counterbalancing amenities must be executed in accordance with the approved plan.
4. 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.
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.

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 Petitioners to ensure conformance with the Board's decision and all applicable building codes.

The Board then deliberated. Board Member Bell stated that he was cognizant of the concerns raised by Board Member Feldman concerning the number of parking spaces and proximity to the alley, but noted that, as Attorney Allen had pointed out, the layout was typical of Brookline. He continued that he believed that the provision of additional units was preferable to the existing single-family dwelling and that four parking spots seemed typical for a property of this type. Board Member Bell further stated that the entire landscaped space would likely have to be devoted to storing trash and recycling, but that residents would be capable of developing a suitable arrangement. Board Member Bell concluded by stating that he would vote in favor of granting the requested relief.

Chair Geller then stated that the project would not change the number of parking spaces but noted that the increase in the number of units intensified and complicated the arrangement. Chair Geller noted that in North Brookline, a parking layout like that proposed is typical and often a matter of necessity. He added that residents are often capable of reaching a satisfactory arrangement, but deferred to the individual Board Members as to whether and how this satisfied the requirements of **Section 9.05**. Chair Geller stated that even in light of the unfavorable parking arrangement, he was comfortable concluding that the proposal would not adversely impact the neighborhood or pose a nuisance to vehicles or pedestrians. Noting that he understood Board Member Feldman's concerns, Chair Geller concluded that he would vote in favor of granting the requested relief.

Board Member Feldman then stated that he would vote in favor of the proposal. He continued that the proposal would add to the supply of housing and that the realities of North Brookline limited the extent to which parking and trash areas could be expanded.

The Board then determined, by unanimous vote, that the proposal met the requirements for granting a special permit under design review pursuant to **Section 5.09**, from the usable open space requirement pursuant to **Section 5.91** and as required for conversion of the use under **Section 5.05**. The Board also allowed the Petitioner, in lieu of providing an affordable unit, to make a payment to the Affordable Housing Trust under **Section 4.08.3.a**. Given the Petitioner's provision of counterbalancing amenities under **Section 5.43**, the Board also granted relief from the parking setback requirements.

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

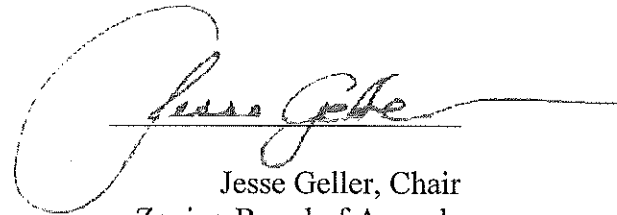
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 or designee for review and approval.

2. Should the applicant choose to keep four parking spaces, they shall submit turning diagrams and additional site plan information showing how trash, recycling, and bicycle storage are managed to the Assistant Director for Regulatory Planning or designee for review and approval.
3. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan indicating all proposed counterbalancing amenities subject to review and approval by the Assistant Director for Regulatory Planning or designee. The counterbalancing amenities must be executed in accordance with the approved plan.
4. 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.
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



Jesse Geller, Chair  
Zoning Board of Appeals

Filing Date: 3/30/23

A True Copy  
ATTEST:



Benjamin Kaufman  
Clerk, Board of Appeals