



Jesse Geller, Chair  
Johanna Schneider  
Lark Jurev Palermo

# *Town of Brookline*

## *Massachusetts*

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043

Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2022-000063  
1182 BOYLSTON STREET

Petitioner Frazier 1182 Holdings LP applied to the Building Commissioner for permission to construct a single second story addition to the existing commercial building located at 1182 Boylston Street. The application was denied and an appeal was taken to this Board.

On October 20th, 2022, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed April 13, 2023, after 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, 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 March 30, 2023 and April 6, 2023 in the Boston Herald. 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, April 13, 2022

**Location:** Virtual Hearing

**Virtual Registration Link:** <https://bit.ly/3lOk9Nr>

Petitioner: Frazer 1182 Holdings LP

Address: 1182 Boylston Street

Subject: Addition of second floor to building and reconfiguring the parking area

Nature of Action/Relief:

§5.09.2.A - DESIGN REVIEW; §5.09.2.H - DESIGN REVIEW; §5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS; §5.70 - REAR YARD REQUIREMENTS; §6.01.2 GENERAL REGULATIONS APPLYING TO REQUIRED OFFSTREET PARKING FACILITIES; §6.04.5.A DESIGN OF ALL OFFSTREET PARKING FACILITIES; §6.04.6 - 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/4003>*

*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:** 3/30/2023 & 4/6/2023

On April 13, 2023, the Zoning Board of Appeals held a virtual public hearing. Present at the hearing was Chairman, Jesse Geller, and Board Members Neil Wishinsky and Wadner Oge.

Attorney Jacob Walters, business address 27 Harvard Street, Brookline, MA presented the case for the petitioner. Also in attendance was the project's architect Derek Rubinoff, business address 82 Spring St, Boston, MA 02132.

Mr. Walters stated that the relief needed could be granted by three (3) **Special Permits**, under **Section 5.09.2a**, **Section 5.43**, and **Section 8.02** of the Zoning By-Law. He continued that the applicant is seeking to add a second floor to the existing building, increasing the gross floor area from 3,817 square feet to 7,683 square feet and that the new second floor would consist of general office space while the first floor would likely be occupied by a bank. Mr. Walters then stated the Planning Board reviewed the original and revised plans for the addition and parking

area at the rear of the building, along with a revised landscape plan and unanimously approved the proposed project design pursuant to **Section 5.09.2.J.** of the Zoning By-Law Mr. Walters added that the applicant, at the request of the Planning Board, engaged a traffic engineer to explore the most efficient traffic pattern in and out of the parking lot and revised its traffic plan accordingly. Mr. Walters continued by stating that the proposed rear parking setback is only two (2') where five (5') is required and suggested a Special Permit under **Section 5.43** of the Zoning By-Law would be appropriate. Pursuant to **Section 5.43**, the Zoning Board may provide relief from setback requirements if an applicant can provide adequate counterbalancing amenities that mitigate the negative impact arising from the requested deviation from the setback requirements. In this instance, Mr. Walters stated the applicant is offering, as counterbalancing amenities, additional landscaping throughout the property, installation of charging stations for electric vehicles, a fence at the rear of the parking lot to screen headlight glare, a bicycle rack for patrons who bike to the premises and a number of overnight parking spaces for neighbors at a minimal cost. The final required Special Permit was under **Section 8.02** alternation or extension, needed because the dwelling being altered is a pre-existing non-conforming structure.

Mr. Walters further stated that prior to this hearing the petitioner showed and discussed the proposed plans with the petitioner's abutters and is not currently aware of any concerns or objections from any of them.

Attorney Walters stated that the requested Special Permits conform to the requirements of **Section 9.05** of the By-Law in that: (a) the specific site is an appropriate location for the proposed structure and use, (b) the use as developed will not adversely affect the neighborhood, (c) there will be no nuisance or hazard to vehicles or pedestrians, (d) adequate and appropriate facilities will be provided for the proper operation of the proposed use and (e) the proposed

addition will not have a significant adverse effect on the supply of housing available to low and moderate income people. Mr. Walters concluded his remarks by saying the modest scope of the applicant's proposal will result in a more pleasing view of the premises from Hammond Street and Boylston Streets and added that the Planning Board's unanimous recommendation of approval warrant this Board granting the requested Special Permits.

Board Member Oge inquired how this proposal compares to an ongoing project across Hammond Street. Attorney Walters responded that he is not sure of the specifications of that project, but that it is larger and entails the construction of a completely new building, compared to this proposal, which is just an addition. In addition, he stated this proposal will not involve any digging, blasting, or other activity of that nature and will most likely involve fewer construction vehicles.

Chair Geller asked, in relation to the construction across the street from this proposal, if there would be conflict between the curb cuts and ingresses and egresses for the respective buildings. Attorney Walters responded that in order to avoid any conflict with the neighboring property driveway on Hammond Street and traffic and safety and congestion back-up concerns on Hammond Street generally, the driveway ingress and egress pattern will be changed to allow for ingress only from Hammond Street and egress only to the lesser trafficked Sheafe Street. Mr Walters specified that there would not be a scenario where there are two driveways facing each other.

Mr. Rubinoff, in reliance on a digital presentation, presented a rendering of the proposal and a site plan. On the site plan, he pointed out the curb cut and the means of ingress and egress. He stated that the plan involves narrowing the curve cut, which will reduce the impact on

Hammond Street, since there will now be a twelve foot curve for ingress only, and the egress will be onto Sheafe Street.

Board Member Wishinsky inquired if the proposed EV charging station would be public. Attorney Walters stated he was not sure, but would pass the recommendation along to his client.

Chair Geller then asked if anyone in attendance wished to speak in support of or in opposition to the petitioner’s proposal. No one asked to be heard.

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

**FINDINGS**

**§5.09.2.A - DESIGN REVIEW**

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

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

**§6.02 - OFF-STREET PARKING SPACE REGULATIONS**

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

**§6.04.6 - DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**§6.04.12 - DESIGN OF ALL OFF-STREET PARKING FACILITIES**

**§7.04 - SIGNS IN I, G, L AND O DISTRICTS**

**§8.02 - ALTERATION OR EXTENSION**

<b>ZONING: G-1.0</b>	<b>Requirements</b>	<b>Existing Conditions</b>	<b>Proposed Conditions</b>	<b>Relief Required</b>
<b>Off-street parking maximum</b>	29	11 spaces	15 spaces	<b><u>Special Permit</u></b> <sup>1</sup>
<b>Setbacks for parking (Sheafe St.)</b>	5'	0	2'	<b><u>Special Permit</u></b> <sup>2,3</sup>
<b>Maximum sign height</b>	25'	> 25'	25'	<b><u>Complies</u></b> <sup>4</sup>

<sup>1</sup> A business, professional, or governmental office is included as a storefront use under Section 6.02.1.e Amendment of the Zoning By-law, which determines that such uses on any lot for which any portion of the lot is within the Transit Parking Overlay District are not subject to the minimum parking space requirements in Section 6.02. The parking ratios shall serve as the maximum number of parking spaces allowed.

<sup>2</sup> **Section 5.43, Exceptions to Yard and Setback Regulations:** Relief from setback requirements can be granted through this section if the applicant can provide an adequate counterbalancing amenity that mitigates negative impacts arising from the requested deviation from the provisions of the Zoning By-law.

<sup>3</sup> **Section 6.04.12, Design of All Off-Street Parking Facilities:** A special permit may be granted to permit the substitution of other dimensional requirements in lieu of the dimensional requirements of Section 6.04, where new parking facilities are being installed to serve existing structures and land uses, provided such substitution is necessary to permit the installation of some or all of the off-street parking spaces that would be required for a similar new building and provided that the provisions of paragraph 6. of Section 6.04 are met.

<sup>4</sup> The signage placeholders were previously placed at 27'-5 1/8" and required a variance. The placeholders were lowered to comply with the height limit of 25 feet as stipulated in **Section 7.01(C)**.

#### **§5.09.2.A - DESIGN REVIEW**

A Special Permit for Design Review is required for exterior alterations or additions of any structure or outdoor use in a lot with front on Boylston Street.

**Section 8.02** - A special permit may be granted for alterations or extensions of a non-conforming structure under the provisions of **Article IX**.

#### **PLANNING DEPARTMENT STAFF COMMENTS**

The proposed one-story addition has an attractive modern design at a reasonable scale. It is unlikely to generate adverse impacts to the surrounding neighborhood. The revised parking arrangement will increase the number of parking stalls from 11 to 15 and improve circulation and safety for drivers and pedestrians with a one-way circulation approach. EV charging stations will also be installed, providing users with spaces to charge hybrid and/or electric vehicles. This change furthers the Town's goal to reduce its carbon footprint and meet its Climate Action goals.

The parking lot did not initially offer headlight glare protection to the neighboring properties on Sheafe Street, as required under Section 6.04.6 of the Zoning By-law, and no counterbalancing amenities were previously provided. Staff advised the applicant to provide landscaping to screen headlight glare, if possible. The revised plans propose a fence as a measure to address headlight glare, which is acceptable under the By-law requirements. The fence should be of a uniform appearance and at least 5 feet high, but no more than 7 feet above finished grade. Staff is pleased that bicycle parking was added to the parking lot.

To improve the applicant's contribution toward the Town's Climate action goals, the Staff suggests using fossil fuel free energy in the addition, making all parking stalls EV Ready, and adding trees on the sidewalks where possible, subject to approval by the Tree Planting Committee. Similar to the arrangement made by the Santander Bank branch at 1228 Boylston Street, overnight parking by area residents should be allowed. Staff believes these would constitute appropriate counterbalancing amenities.

The applicant is also proposing signage at the top of the building, which initially required a

variance because it exceeded the 25-foot height maximum allowed for signs. Before the Zoning By-law was changed, a special permit was allowed for signs at the top of a building, if it was the name of the building. This is no longer included in the revised sign regulation. The applicant has lowered the proposed signage in order to comply with the height requirements. The applicant will have to return to the Planning Board when signage package is complete with letter heights, colors, and the name of the business.

### **PLANNING BOARD COMMENTS**

The Planning Board considers the proposed design attractive and a great addition to a very significant corner. The Board is pleased with the improvements made by the applicant to address concerns raised about parking and traffic, signage, and landscaping. The Board suggests an additional condition to protect the existing tree near the parking lot, add a new tree, and require a stormwater management plan.

**The Planning Board recommends approval of the site plan by EMB CO., PLS, dated 8/30/22, and architectural plans by DEREK RUBINOFF ARCHITECT, RA, revised on 1/25/23, 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 parking lot plan, including EV spaces, bike parking and signage to allow overnight parking by area residents, and a landscape plan that shows proposed counterbalancing amenities, including a landscape fence screening, subject to approval by the Assistant Director for Regulatory Planning and the Tree Warden, if applicable. The counterbalancing amenities shall include an additional tree to the sidewalk on Hammond Street and must be executed in accordance with the approved plan.**
- 3. The second story addition, and if possible the first floor, shall use fossil fuel-free utilities.**
- 4. Prior to the issuance of a building permit, the applicant shall electronically submit a stormwater management plan, stamped and signed by a registered engineer, subject to the approval of the Director of Engineering.**
- 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.**

The Chair then called upon Paul Campbell to provide the Building Department report. Mr.

Campbell stated that the Building Department has no objections to the request for relief and

stated if the Board grants relief the Building Department will ensure compliance with the Building Code.

The Board then deliberated. Board Member Oge stated he appreciates the additional commercial space it will provide and he believes it meets the criteria of **Section 9.05**. He stated he would be in favor of the proposal.

Board Member Wishinsky stated that compared to the commercial development going on across Boylston Street, this is fairly small-scale and a missed opportunity. However, he understands this is what is allowed under the current Zoning By-Law, and it will need to be amended if the Town ever hopes for more large-scale commercial development. He stated he is voting in favor of the proposal.

Chair Geller stated he agrees with Mr. Wishinsky's comments and also votes in favor of the requested relief, subject to the conditions.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits and that the petitioner has satisfied the requirements necessary for relief under **Sections 5.09.2.a, 5.43, 8.02, and 9.05** of the Zoning By-Law and made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

- 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, and
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income citizens.



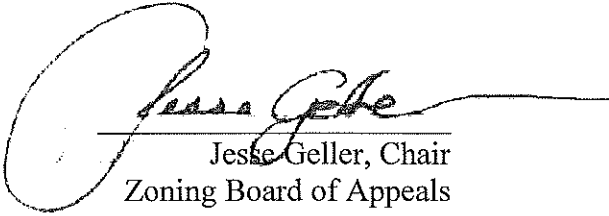
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

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 parking lot plan, including EV spaces, bike parking and signage to allow overnight parking by area residents, and a landscape plan that shows proposed counterbalancing amenities, including landscaping, landscape fence screening (in addition to neighborhood parking), subject to review and approval by the Assistant Director for Regulatory Planning and the Tree Warden, if applicable. The counterbalancing amenities shall include an additional tree to the sidewalk on Hammond Street and must be executed in accordance with the approved plan.
3. The second story addition, and, if possible, the first floor, shall use fossil fuel-free utilities.
4. Prior to the issuance of a building permit, the applicant shall electronically submit a stormwater management plan, stamped and signed by a registered engineer, subject to the approval of the Director of Engineering.
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

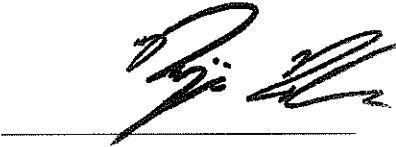
The Board of Appeals



Jesse Geller, Chair  
Zoning Board of Appeals

Filing Date: 5/16/2023

A True Copy  
ATTEST:



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Clerk, Board of Appeals