



# *Town of Brookline*

## *Massachusetts*

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

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2022-000012  
4 GREENWAY COURT

Petitioner, 4 Greenway Court, LLC, applied to the Building Commissioner for permission to construct an addition at the top of the building located at 4 Greenway Court and other alterations. 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 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, and April 14, 2022, in the *Boston Globe*, a newspaper of general circulation 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:** 4 Greenway Ct. LLC **Address:** 4 Greenway Court

**Zoning:** M-2.0 **Precinct:** 17

**Description:** Construct an addition at the top of the building and duplex two units (no change to number of units) and other alterations

**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):**

**§5.09.2.D – DESIGN REVIEW**

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

**§5.50 - FRONT YARD REQUIREMENTS**

**§5.60 - SIDE YARD REQUIREMENTS**

**§5.70 - REAR YARD REQUIREMENTS**

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

**§8.02 - ALTERATION OR EXTENSION**

**[MODIFICATION OF PRIOR DECISION: ZBA-2014-0053]**

**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](mailto: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](mailto:vpanak@brooklinema.gov), or by checking the Town meeting calendar at: [www.brooklinema.gov](http://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: 4/7/2022 & 4/14/2022**

On January 5, 2023, the Zoning Board of Appeals held a public hearing.<sup>1</sup> Present at the hearing were Chair Johanna Schneider and Board Members Randolph Meiklejohn and Wadner Oge. The case was presented by the attorney for the Petitioner, Jennifer Dopazo Gilbert, RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance were Avidan

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<sup>1</sup> The Board of Appeals had continued without testimony the matter of 4 Greenway Court at its public hearings on 4/28/2022, 5/26/2022, 7/7/2022, 9/1/2022, 9/29/2022, and 11/10/2022.

Edelsberg, on behalf of the Petitioner, and David O'Sullivan, the project architect, O'Sullivan Architects, Inc., 606 Main Street #3001, Reading, Massachusetts.

Zoning Board of Appeals Chair Schneider called the hearing to order at 7:00 pm. Chair Schneider 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. She stated that 4 Greenway Court is located in the M-2.0 zoning district, where the maximum allowed floor area ratio is 2.0, with the FAR of the present proposal being 1.97. Attorney Dopazo Gilbert continued that the property at 4 Greenway Court is one of five separate buildings connected by a shared party wall, with each structure remaining under different ownership. She further noted that 3 Greenway Court consists of condominiums and that 9 and 10 Greenway contain eight and fourteen apartment units, respectively. Attorney Dopazo Gilbert then stated that a proposal at 4 Greenway Court had previously been granted relief by a 2014 decision of the Board, with that project consisting of seven total units and three parking spaces.

Attorney Dopazo Gilbert noted that the Planning Board had, upon its review of an earlier version of the present proposal, insisted that more than two additional units be created with the conversion, given its location in the TPOD and 0.1 mile distance from a T stop. Attorney Dopazo Gilbert noted that project architect David O'Sullivan and his team had managed to create three additional units, resulting in a proposed 10 total dwelling units at 4 Greenway Court. She added that the Preservation Commission had determined that the proposal did not trigger the demolition by-law.

Attorney Dopazo Gilbert then reviewed the requested zoning relief. She stated that due to the creation of the additional dwelling units, the project would have to satisfy the Affordable Housing requirements of **Section 4.08**, with the requisite cash payment to be made to the town's Affordable Housing Trust. She continued that Special Permit relief was also requested under **Section 5.05**, allowing the Board to waive all dimensional requirements for a conversion, and under the new parking requirements by-law, which had been approved by the Town Meeting but was as-yet unpublished, permitting a waiver for all but three required parking spaces.

David O'Sullivan, the project architect, then presented the site plans to the Zoning Board of Appeals. Using a digital presentation, Mr. O'Sullivan stated that landscaping would be improved along the right-side and front of the property, with parking to remain at the rear of the structure. He continued that, consistent with many other homes in the neighborhood, two new terrace patios would be created for use by the existing basement unit and new first-floor unit. Mr. O'Sullivan then briefly displayed the species of plants that had been selected for the proposed landscaping. He further noted that while no setbacks would be changed with the project, the proposed additional square footage would decrease the usable open space to 9.2%, an amount below the required minimum of 10%.

Mr. O'Sullivan, displaying photographs of the exterior of the building, then identified a courtyard, the parking area, and the structure's basement level. He then presented the proposed floor plans, stating that a new terrace would be created for the existing basement unit, that a new one-bedroom apartment would be created from existing space on the first floor, and that the second and third floors would remain largely unchanged, save some changes to the stairs on the third floor. Mr. O'Sullivan then detailed the planned addition: Two dwelling units, each consisting of three bedrooms, would be built on the roof, where they would be setback by three feet in order to

preserve the building's existing façade. He noted that the structure's height would be increased by 11 feet while remaining in compliance with the zoning by-law, with a three-foot tall parapet wall to also be installed around the roof's edge.

Mr. O'Sullivan then stated that the planned terraces in the building's front would largely mimic the design captured in a photo of the landscaping at 3 Greenway Court. He further noted that minor changes were proposed to the building's existing windows in order to increase the supply of natural light.

Chair Schneider then inquired as to what materials would be used in constructing the roof addition. Mr. O'Sullivan stated that the addition would consist of panel siding, or a similarly nondescript material, oriented to match the horizontal lines on the building's existing façade.

Board Member Oge stated that a neighbor had noted the proposed height of the structure. Mr. O'Sullivan responded that the design was within the permitted zoning envelope, adding that other buildings in the neighborhood could undertake identical changes. Attorney Dopazo Gilbert stated that a similar comment had been made at the Planning Board meeting, with the Chair of that Board having expressed his support for the creation of more dwelling units in the area. She further noted that the Board felt that it had satisfactorily addressed the possible effects of the height increase, including any shadow impacts.

Board Member Oge then asked whether the addition's exterior color would match that of the existing building. Mr. O'Sullivan stated that a final decision on the matter had yet to be made, but he noted that the color would almost certainly be a light one to blend with the sky.

Board Member Meiklejohn then asked to review the basement plans. He then inquired as to how the additional unit on the first floor was being created. Mr. O'Sullivan responded that the living area and bathroom in the new unit would be converted from presently unused office and

storage space. He further stated that the new unit's kitchen and bedroom area would consist of what is now mechanical space.

Board Member Meiklejohn then stated that, according to the details of the Planning Board report, Special Permit relief was available under **Section 5.05**, thereby allowing the usable open space requirement to be waived if an existing unit is being converted to create additional units. He then asked whether any of the three additional units were being created by conversion from an existing dwelling unit.

Attorney Dopazo Gilbert stated that there was no definition of "conversion" provided in the Zoning By-laws. She then read the relevant portion of the by-laws, stating that, given "the conversion of a dwelling to create additional dwelling units..., the Board may waive any of the dimensional requirements...." Attorney Dopazo Gilbert stated that she agreed with the earlier findings of the Planning Board and Building Commissioner, who had also read the aforementioned language as permitting the Zoning Board of Appeals to waive dimensional requirements for the proposal because it is a "conversion."

Chair Schneider then asked Paul Campbell, the Deputy Building Commissioner, to provide his thoughts on the issue. Mr. Campbell stated that in previous cases, particularly some along Strathmore Road, waivers of dimensional requirements under **Section 5.05** had been granted where existing dwelling units, including some attached by a shared party wall, have proposed the addition of new dwelling units.

Board Member Meiklejohn then asked Mr. Campbell whether a proposal could be considered a "conversion" when its additional units do not include the space of an existing dwelling. Chair Schneider agreed with Board Member Meiklejohn's suggestion that earlier cases

may have differed insofar as their additional units involved at least some conversion of existing dwelling space.

Board Member Oge asked whether the entire structure could be considered a dwelling. Mr. Campbell responded that this case was unique from earlier cases but noted that there was ambiguity in the by-law because of its failure to specify the requirements of a conversion. He continued that the plain language of the statute appeared not to restrict the concept of a “conversion” to only those additional dwelling units created by existing dwelling or unfinished space.

Board Member Meiklejohn commented that the existing structure appeared to already contain enough extra space to create an additional dwelling unit, unlike the buildings in previous cases, where existing dwelling space necessarily had to be converted to create a new unit.

Chair Schneider stated that she also shared reservations about the applicability of **Section 5.05** to the present proposal. She stated that it was appropriate for the applicant, therefore, to have an opportunity to seek alternative relief for the proposed amount of usable open space, given that all of the other requested relief appeared warranted.

Attorney Dopazo Gilbert then stated that, while additional units were being added on top of the existing building, interior space was still being converted into an additional dwelling unit. Chair Schneider clarified that this applied to only one of the proposed additional units. Attorney Dopazo Gilbert responded that the proposal was a hybrid, with **Section 5.05** applying to the entirety of the project because it was, at least to some extent, undoubtedly a conversion. She further stated that there was no provision that excluded the application of **Section 5.05**, either partly or fully, from a conversion that also involved an addition.

Attorney Dopazo Gilbert then stated that nevertheless, 4 Greenway Court had previously been granted zoning relief in the form of a variance. She continued that, while she found such an

argument unnecessary, she would make a request for similar relief if the Board thought it appropriate.

Chair Schneider asked Mr. Campbell whether she agreed with the interpretation of **Section 5.05**, as offered by Attorney Dopazo Gilbert, that “hybrid” addition-conversion projects may be granted relief. Mr. Campbell responded that while he was still uncertain to the extent that the section was ambiguous, the ambiguity enabled him to agree with Attorney Dopazo Gilbert’s reading of the by-law.

Board Member Meiklejohn then stated that he was focused on whether the proposal’s decrease in usable open space was attributable to the additional square footage to be contained in the converted unit. Mr. O’Sullivan stated that roughly 300 square feet was already included in the calculation of open space, with 300 square feet having been added to calculate the proposed usable open space figure.

Mr. O’Sullivan then stated that an alternative design included roof decks. He continued that these decks, to be accessible from each of the new roof units, would constitute open space, thereby bringing the project into compliance with the minimum amount required. Attorney Dopazo Gilbert noted that the Planning Board had also offered its support for this design. Mr. O’Sullivan added that the decks would bring total usable open space to 11.2%.

Board Member Meiklejohn then asked whether the project could proceed by granting relief under **Section 5.05** to the extent that the building’s existing space would be included in the new dwelling units.

Chair Schneider stated that she believed the section was inapplicable to a hybrid scenario. She continued that relief may be available by the application of **Section 5.05** in the partial manner suggested by Board Member Meiklejohn. Chair Schneider, noting that the 2014 decision regarding



4 Greenway Court appeared marginal, further stated that a variance argument could be made or that an interpretation of the statute from other bodies could be sought.

Attorney Dopazo Gilbert stated that she would explore the aforementioned alternatives, in addition to using roof decks, to satisfy the proposal's usable open space requirement. She also advised the Board that a Special Permit would also be required under a new bicycle parking requirement, with the same by-law allowing the Board to waive up to half of the required 11 parking spaces.

Attorney Dopazo Gilbert then requested a continuance for the matter of 4 Greenway Court to the Board's public hearing on January 19, 2023.

The Zoning Board of Appeals then granted, by unanimous vote, the requested continuance of the matter of 4 Greenway Court to January 19, 2023.

On March 30, 2023, the Zoning Board of Appeals continued the public hearing.<sup>2</sup> Present at the hearing were Chair Johanna Schneider and Board Members Randolph Meiklejohn and Wadner Oge. The case was presented by the attorney for the Petitioner, Robert Allen, Jr., RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance were Avidan Edelsberg, on behalf of the Petitioner, and David O'Sullivan, the project architect, O'Sullivan Architects, Inc., 606 Main Street #3001, Reading, Massachusetts.

Zoning Board of Appeals Chair Schneider called the hearing to order at 7:00 pm. Chair Schneider 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 noted that a reading of the published notice of hearing had been waived at the Board's meeting on January 5, 2023.

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<sup>2</sup> The Board continued the matter of 4 Greenway Court at its January 19, 2023, hearing.

Attorney Allen presented the case for Petitioner. Attorney Allen stated that at the previous hearing on the present matter, which had been attended by his law partner, Attorney Jennifer Dopazo Gilbert, the Board had engaged in a lengthy discussion regarding the applicability of **Section 5.05**. He continued that after subsequent design changes, particularly the allocation of additional open space, **Section 5.05** was no longer implicated by the proposal, as confirmed by his discussions with the Building Department. Attorney Allen then stated that, aside from the matter of open space, he believed that all other zoning relief had been addressed by Attorney Dopazo Gilbert at the earlier Board of Appeals hearing. He continued that he would nevertheless have the project architect, David O'Sullivan, review the site plans and illustrate the changes to the Board.

Board Member Meiklejohn stated that he recalled the Board's previous review of the matter, including its discussion on **Section 5.05**, being a complex one. He then inquired as to whether an additional dwelling unit was being created by the project. Attorney Allen responded in the affirmative. Board Member Meiklejohn then asked Attorney Allen to explain why relief under Section 5.05 was no longer required. Attorney Allen stated that relief had previously been required under that section because of the failure of the proposal to meet the open space requirements under Table 5.01. He continued those subsequent changes to the design had increased the available open space, thereby negating the need for relief under **Section 5.05**.

Chair Schneider then clarified that relief under **Section 5.05** was no longer needed and that the presently requested relief consisted of requests for Special Permits under **Section 5.43** and **Section 9.05**. Attorney Allen responded in the affirmative. Chair Schneider then asked Attorney Allen to review the specific dimensional relief being requested. Attorney Allen inquired as to whether the Board would first like to have the design changes presented. Board Member Meiklejohn requested that the design changes be presented.

David O'Sullivan, the project architect, then presented the site plans to the Board. Using a digital presentation, Mr. O'Sullivan displayed the design for the project's proposed roof deck. He stated that the project now created, in essence, two new roof decks, each of which was tied to one of the top floor units. Mr. O'Sullivan continued that adding a roof deck with private access for the units on the top floors, in addition to the open space on the ground floor, now resulted in the proposal meeting the usable open space requirements. He added that the design also provided the minimum 15x15 feet spaces needed to satisfy the definition of "usable open space." Noting that the usable open space figures were presented in an accompanying chart, Mr. O'Sullivan concluded that the aforementioned changes were the only ones since the Board had last reviewed the design.

Board Member Meiklejohn asked for confirmation that the updated project dimensions now satisfied the minimum open space requirements in the M-2.0 zoning district. Mr. O'Sullivan, navigating to the aforementioned chart, confirmed that the minimum 10% of gross floor area requirement for usable open space was, in fact, met by the proposal's provision of 10.02% of the gross floor area.

Board Member Oge then inquired as to why the proposed design used different materials from the existing structure. Mr. O'Sullivan responded that replicating the brick design of the existing structure was, as an architectural matter, infeasible, adding that a "perfect" match could never quite be obtained when constructing an addition. Board Member Oge then stated that the addition did not appear centered on the existing structure. Mr. O'Sullivan responded that the structure was attached on one side of the building, a fact that made the addition appear off-center in the drawing.

Attorney Allen then reviewed the requested zoning relief. Attorney Allen stated that the present proposal, after input from the Planning Board, had been amended to add more housing

units. He continued that as a result of the additional units, a greater payment was now required, and would be made, to satisfy the Affordable Housing provisions of **Section 4.08.5.d**. Attorney Allen then stated that relief was also required pursuant to design review under **Section 5.09.2.d**. He continued that relief was also sought under **Section 5.43** for a waiver of minimum yard setbacks, as the proposed front setback of 10.1 feet did not meet the minimum required front setback of 19.8 feet under **Section 5.50**. Attorney Allen further stated that similar relief was requested from the minimum 20.1-foot side yard and minimum 15-foot rear yard requirements of **Sections 5.60** and **5.70**, respectively, with the proposed addition's side-yard and rear yard measuring 13.2 feet and 1 foot. He continued that relief from all setback requirements was available, under **Section 5.43**, by the provision of counterbalancing amenities, namely the addition of rooftop decks and the implementation of a detailed and extensive landscaping plan.

Attorney Allen then stated that the proposed project also met all of the requirements for a special permit under **Section 9.05**, stating the followings: 1) Specific site is an appropriate location for such use: The existing building is residential, and the addition is consistent with this use. The property is located within 0.1 miles of an MBTA stop, and is therefore an appropriate location to waive the three additional parking spaces that would otherwise be required. 2) Use will not adversely affect the neighborhood: There is no expectation that the interior or exterior changes could have any negative impact to the neighborhood. Three abutters have offered letters in support of the proposal, with each having been submitted to the Board. There is no known opposition to the project. 3) There will be no nuisance or serious hazard to vehicles or pedestrians: No changes are being made to the parking or site circulation. 4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use: 5) There will be no effect on the supply on

housing available for low and moderate income people: This project will, in fact, create new housing units and result in a payment to the Town's Affordable Housing Trust.

Board Member Meiklejohn inquired as to how a payment for affordable housing could constitute a "counterbalancing amenity" if it was required elsewhere in the by-laws. Attorney Allen responded that the Board had discretion under **Section 5.43** to determine whether counterbalancing amenities existed for a given project. He continued that, because the proposal now included additional units at the behest of the Planning Board, it had fulfilled one of the town's stated goals of increasing the supply of housing, particularly in areas readily accessed by the T. Attorney Allen stated that, in light of the fact that the provision of these additional units had increased the required payment to the town's Affordable Housing Trust per **Section 4.08.5.d**, the Board could use its discretion under Section **5.43** to find that the provision of the units or the resultant additional constituted the requisite counterbalancing amenity. Attorney Allen concluded that counterbalancing amenities were nevertheless being provided by improving the property's landscaping and open spaces.

Board Member Meiklejohn noted that he placed greater value on the landscaping and open space changes, given the lack of such amenities in the area due to its increased density. Attorney Allen agreed, adding that the proposed improvements would be visible from Green Street.

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

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

## **FINDINGS**

**§4.08 –AFFORDABLE HOUSING REQUIREMENTS** are triggered for addition of new dwelling units in a residential building of three or more units.

**§5.09.2.D – DESIGN REVIEW** is required for alteration of “*attached dwellings in groups of three or more*”. An Impact Statement was submitted that addresses the Community and Environmental Impact and Design Standards satisfactorily.

**§5.50 –FRONT YARD SETBACK**

**§5.60 –SIDE YARD SETBACK**

**§5.60 –REAR YARD SETBACK**

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

**§6.05 – BICYCLE SPACE AND DESIGN REGULATIONS**

**§8.02 - ALTERATION OR EXTENSION**

ZONING: M-2.0	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Floor Area Ratio	2.0 (100%) 13,672sf	1.5 (76%) 6,836sf	1.96 (98%) 13,409sf	<u>Conforms</u>
Front Setbacks				<u>Special Permit</u> <sup>1,2</sup>
From Green St	19.8' (15+H/10)	10.1'	10.1' (11.1' at addition)	
From “Passageway”	19.8'	27.7'	27.7' (28.7' at addition)	
Side Setbacks (Left / Right)	20.1' (H+L/6)	12.2'	12.2' (13.2' at addition)	<u>Special Permit</u> <sup>1,2</sup>
Rear Setback	14.98'	0'	0' (1' at addition)	<u>Special Permit</u> <sup>1,2</sup>
Usable Open Space	10%	12%	9.2%	<u>Special Permit</u> <sup>2</sup>
Parking	20	3	3	<u>Special Permit</u> <sup>3,4</sup>

<sup>1</sup> Section 5.43, Exceptions to Yard and Setback Regulations: Relief from setback requirements can be granted through Section 5.43 which states that relief may be granted if the applicant can provide an adequate counterbalancing amenity that mitigates negative impacts arising from the requested deviation from the requirements of the Zoning Bylaw.

<sup>2</sup> Under Section 5.05, Conversion, a special permit may waive all dimensional requirements for conversion of a dwelling unit to create additional dwelling units, except for minimum lot size.

<sup>3</sup> Under Section 6.01. 2.a., Off-Street Parking Space Regulations, in SC, T, F, M, L, or G Districts, 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 §6.02 and §6.05. However, the Board of Appeals by special permit under Article IX may reduce or eliminate waive the minimum number of parking spaces required under §6.02 and §6.05. [cross out is old zoning by-law]

<sup>4</sup> Under Section 6.02.b, Off-Street Parking Space Regulations, the Zoning Board of Appeals may reduce or eliminate, by special permit under the requirements of Section 9.05, the minimum parking requirements of §6.02, Paragraph 1, TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS for all residential uses, as listed in §4.07 of the Table of Use Regulations numbers 1-8a, if the Zoning Board of Appeals finds that the reduction or elimination of minimum parking requirements accomplishes one or more of the following:

- Creation of an additional unit or units than would be allowed under the existing zoning, except for the lack of available parking under current requirements.

- Provision of on-site affordable housing units in excess of those required by Section 4.08 of the Zoning By-Law. Where a project includes both market-rate and affordable units, the parking ratio shall be the same for all units.
- Construction or renovation of the proposed building or use to be fossil-fuel-free when not otherwise required.
- Preservation of a building with historic or architectural significance as determined by the Preservation Commission. Reductions may be denied to any project that involves demolition of an existing structure, whether or not determined to be of historic or architectural significance.
- Preservation of a landmark tree or significant landscaping element as determined by the Town Tree Warden.
- Provision of significantly more usable and/or landscaped open space than required by the Zoning By-Law
- Providing support to community services or facilities as accepted and approved by the Director of Public Works or Building Commissioner

**Or other material counterbalancing amenities as determined appropriate by the Planning Board and Zoning Board of Appeals.** *[Above added to Zoning By-Law after its approval by the Attorney General in December, 2021.]*

**<sup>4</sup>Under Section 6.02.H, Off-Street Parking Space Regulations**

h. Residential uses on any lot for which any portion of the lot is within the Transit Parking Overlay District, notwithstanding the requirements of §3.02 paragraph 4, must provide no fewer off-street parking spaces per dwelling unit than 1 for studio units, 1.4 for one-bedroom units, 2 for two-bedroom units, and 2 for dwelling units of three or more bedrooms, but any new construction, redevelopment, or conversion that is otherwise subject to this subsection and that results in an increase in the number of housing units need not provide more than 0.5 parking spaces per studio unit or **1 parking space for any dwelling unit of 1 or more bedrooms**; however, any development in the Transit Parking Overlay District containing at least 15 dwelling units shall provide handicap accessible parking spaces (as described in §6.04g) equal to at least 5% the number of residential units.

**Under Section 6.05, Bicycle Space Regulations, 1.1 long-term bicycle space per dwelling unit in buildings with 8 or more units is required. Therefore, 11 bike spaces would need to be shown on the site plan.**

PLANNING DEPARTMENT COMMENTS

Ms. Anthony stated that the Planning Department Staff is pleased that the applicant has responded to the Planning Board's request to add additional units. She continued that by adding three new residential units, however, rather than enlarging two existing units, the applicant now triggers new sections of zoning relief for parking and affordable housing. Ms. Anthony further stated that the parking is proposed to maintain at three spaces, as approved in a 2014 case when one additional unit was added for a total of seven units. She noted that additional parking, however, may be waived through the granting of a special permit either under Section 6.01.2.a, Conversions, or Section 6.02.b, Off-Street Parking Space Regulations. Ms. Anthony added that the parking sections were recently revised by Town Meeting. She then stated that the fourth floor addition is attractively designed and is set back behind the cornice of the original brick building and thus does not detract from the existing architecture of the building. Ms. Anthony concluded that because this property is within close walking distance to the MBTA rapid transit on Beacon

Street and the bus line on Harvard Street, waiving increased parking is appropriate, 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 supports the proposal for an addition of a fourth floor for this three-story building, because rather than duplexing two units and keeping the number of units the same, the applicant is adding two new units on the top floor and one new unit in the basement, thus providing needed additional housing for the Town. She continued that while residents of the abutting property at 3 Greenway Court were opposed, several neighbors submitted support letters. Ms. Anthony noted that the Planning Board commented that the addition is within the allowed FAR and height, finds it attractively designed, and because it is set back behind the cornice of the building, not objectionable.

Ms. Anthony continued that the Planning Board, therefore, recommended approval of the site plan by PFS Land Surveying, dated October 17, 2021, and architectural plans by O’Sullivan Architects, dated October 3, 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 final landscaping plan showing counterbalancing amenities 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, 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 Schneider then called upon Paul R. Campbell, Deputy Building Commissioner, to deliver the findings of the Building Department. Mr. Campbell stated that he would first address two preliminary matters. He continued that as to the aforementioned conditions, the dates of the plans would need to be updated because of changes made by O'Sullivan Architects. Mr. Campbell then stated that, while he believed there was a typo on the zoning chart relating to usable open space, the discrepancy could be remedied prior to the issuance of a building permit. He added that the Building Department had worked with the Petitioner to correct those numbers and that they conformed with the requirements of **Section 5.91**.

Chair Schneider then asked Mr. O'Sullivan to provide the dates of the updated plans. Mr. O'Sullivan responded that both the engineering plans and architectural plans were dated March 17, 2023.

The Board then deliberated. Board Member Meiklejohn stated that the proposal no longer involved the issue raised previously at the Board's January hearing. He continued that the all of the presently requested relief for setback and parking requirements was available through special permit, subject to the provision of a counterbalancing amenity, under **Section 5.43**, in the form of the proposed landscaping improvements. Board Member Meiklejohn, noting that the special permit requirements of **Section 9.05** had been satisfied, voted in favor of granting the requested relief.

Board Member Oge stated that he was also in favor of granting the requested relief, as the proposal satisfied the requirements of **Section 9.05**. He continued that, subject to verifying the figure provided for usable open space, he would vote in favor of granting the relief.

Chair Schneider then concurred with the comments of the Board Members. She continued that the issue of the prior hearing, involving the applicability of **Section 5.05** to a conversion, was removed by the provision of additional open space. Chair Schneider noted that she was pleased that the design had been amended to include three additional dwelling units at the suggestion of the Planning Board, particularly given the property's location. She added that abutters' letters expressing approval for the proposal evidenced at least some neighborhood support. Chair Schneider further supported relief for the parking requirement, noting that the property is not one where technical application of the parking requirements was necessary. She concluded by voting in favor of the requested relief.

The Board then determined, by unanimous vote, that the proposal met the requirements for a special permit under design review pursuant to **Section 9.05**. 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 a counterbalancing amenity under **Section 5.43**, the Board also granted relief from the setback requirements under Section 5.50, 5.60 and 5.70. The Board also granted special permit relief waiving the parking requirements of **Section 6.02.H** pursuant to **Section 6.02.1.B** and a waiver to the bicycle requirements under **Section 6.05**.

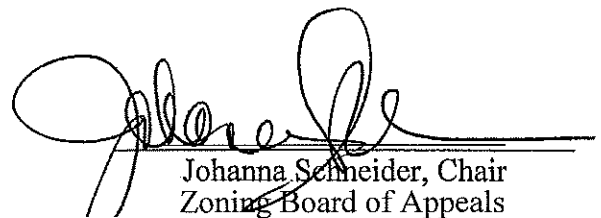
In addition, the dates for both the approved site plans and the survey were amended to March 17, 2023. The Board also made the following specific findings under **Section 9.05** based on the evidence submitted at the hearing and the Board's deliberation:

- 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 final landscaping plan showing counterbalancing amenities 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, 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.

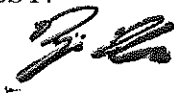
Unanimous Decision of  
The Board of Appeals



Johanna Schneider, Chair  
Zoning Board of Appeals

Filing Date: 5/25/2023

A True Copy  
ATTEST:



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Benjamin Kaufman  
Clerk, Board of Appeals