



# *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. 2022-000080  
50 VERNON STREET

Petitioner, 50 Vernon Street Development LLC, applied to the Building Commissioner for permission to construct an addition at the top of the building and to add a new dwelling unit at 50 Vernon Street, Brookline, Massachusetts. 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 27, 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 *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, April 27, 2023

**Location:** Virtual Hearing

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

**Petitioner:** 50 Vernon Street Development LLC

**Address:** 50 Vernon Street

**Subject:** Construct addition above existing building and create an additional housing unit

**Nature of Action/Relief:**

§4.08 - AFFORDABLE HOUSING REQUIREMENTS;§5.05 – CONVERSIONS;§5.30 - MAXIMUM HEIGHT OF BUILDINGS;§5.31 - EXCEPTIONS TO MAXIMUM HEIGHT REGULATIONS;§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS;§5.50 - FRONT YARD REQUIREMENTS;§5.52 - FENCES AND TERRACES IN FRONT YARDS;§5.60 - SIDE YARD REQUIREMENTS;§5.62 - FENCES AND TERRACES IN SIDE YARDS;§5.70 - REAR YARD REQUIREMENTS;§6.01.2.A – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES;  
§6.04.5.B – DESIGN OF ALL OFFSTREET PARKING FACILITIES;§8.02 - ALTERATION OR EXTENSION

*Plans and submissions may be viewed online at*

<https://www.brooklinema.gov/DocumentCenter/Index/4064>

*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: 4/13/2023 & 4/20/2023**

On June 15, 2023, the Zoning Board of Appeals held a public hearing.<sup>1</sup> Present at the hearing were Chair Randolph Meiklejohn and Board Members Neil Wishinsky and Wadner Oge. The case was presented by the attorney for the Petitioner, Robert L. Allen, RLAW P.C., 300 Washington Street, Brookline, Massachusetts. Also in attendance was the project architect, Gary Hendren, Hendren Associates, 119 Braintree Street, Suite 209, Boston, Massachusetts.

Zoning Board of Appeals Chair Meiklejohn called the hearing to order at 7:00 pm. Chair Meiklejohn reviewed the standard hearing procedure for virtual hearings and confirmed that all

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<sup>1</sup> The Board of Appeals had continued without testimony the matter of 50 Vernon Street at its public hearings on April 27, 2023 to June 15, 2023 at 7:00pm. virtually as the continued time and date certain.

Board Members and staff could visually and auditorily engage in the hearing. Attorney Allen waived a reading of the published notice.

Attorney Allen explained that the proposal for 50 Vernon Street involves the addition of a new residential unit, bringing the total of residential units to five units. He stated that the creation of this additional housing unit requires a payment to be made to the Affordable Housing Trust Fund. Attorney Allen further stated that the proposal aims to construct an addition on top of the existing building while staying within its current footprint. Additionally, the existing parking lot would undergo improvements as part of the project. According to Attorney Allen, this serves as an excellent example of utilizing an existing footprint to add another floor for increased housing, without the need for demolishing the current building or placing excessive strain on the site. Furthermore, he emphasized that the proposal would enhance the existing rear parking lot, which is currently crowded with cars. This would involve minimizing the amount of pavement, and creating some open space.

Attorney Allen affirmed that 50 Vernon Street is an existing four-unit apartment building, which currently falls within the jurisdiction of the M 2.0 zoning district. He emphasized that the neighborhood predominantly consists of multi-family housing, located in close proximity to St. Mark's Park and within a five-minute walk from the nearest MBTA T-Stop. Furthermore, Attorney Allen stated that on March 22, 2022, the Preservation Commission found the existing building historically significant. As a result, the Commission imposed a one-year demolition delay, which duly lapsed on March 22, 2023.

Attorney Allen proceeded to provide an account of the Planning Board meeting. He emphasized that the Planning Board, in general, expressed favorable support for the proposed project while also presenting specific design recommendations. Attorney Allen stated that the

Planning Board made several requests. Firstly, he stated that the Planning Board requested a reduction in the size of the rooftop deck to ensure that the railing is set back from the building's edge. In response to this request, the deck was pulled back and reduced in size. Attorney Allen stated, secondly, the Planning Board expressed the desire for the removal of one of the stair head houses. Attorney Allen pointed out that compliance with building code necessitates the provision of two stair headhouses. However, Attorney Allen stated, the stair headhouses have been reduced in size to accommodate the Planning Board's concerns about massing and visual impact.

Additionally, Attorney Allen stated that the Planning Board emphasized the need for explicit inclusion of trash and recycling provisions in the project plans. In response, Attorney Allen confirmed that the revised plans now incorporate the required information as requested by the Planning Board.

Lastly, Attorney Allen stated, the Planning Board emphasized the importance of reconfiguring the parking area. Attorney Allen stated that the petitioner is making substantial efforts to significantly improve the current condition of the parking lot. He stated that the current state of the rear parking area is disorderly and the proposal is restriping the parking spaces to create organization of the parking spaces.

Attorney Allen then stated that the condominium association at 52 Vernon Street reached out to the Petitioner with concerns regarding the proposal. He stated that an agreement had been reached between the Petitioner and the 52 Vernon Street condominium association that would stand on its own as a private agreement.

Mr. Hendren presented the architectural drawings, which included a review of the site plan indicating the proposed locations for the trash and recycling bins. He also mentioned that two trees would be added to increase privacy for the building to the east, #44-46.. Additionally, Mr. Hendren

discussed the plan to remove some asphalt and convert it into a landscaped area. He reviewed the existing and proposed floor plans and elevations and provided the Board with an overview of the design changes and how the new structure would differ from the current one.

In response to a query from Board Member Wishinsky, Mr. Hendren described the planned driveway and grade changes, which aimed to level the driveway. He also mentioned that the paving would be modified to clearly distinguish between the pedestrian passageway and the driveway, improving safety and functionality. Mr. Hendren then described the proposed counterbalancing amenities by way of reviewing the proposed landscaping plan. He described the currently paved area that would be made into a landscaped area, with newly planted trees and other plantings, and an improvement to the pedestrian passageway.

In response to Chair Meiklejohn's inquiry, Attorney Allen clarified that the current property lacks any usable open space. He further explained that the proposed development would result in an increase of approximately 4,727 square feet in gross floor area, with a corresponding requirement of 473 square feet for landscape and usable space. Attorney Allen emphasized that the proposal would incorporate an additional 1,240 square feet of open space and 692 square feet of landscape space.

Attorney Allen then reviewed the requested zoning relief. Mr. Allen stated that a special permit is requested under **Section 4.08** Affordable Housing Requirements since the proposal creates an additional residential unit. To fulfill this requirement, Attorney Allen confirmed that a payment would be made to the Town's Affordable Housing Trust Fund.

Attorney Allen stated that special permit relief was sought for dimensional nonconformities pursuant to **Section 5.05**. He explained that the Board may grant special permit relief for nonconforming dimensional requirements as long as existing nonconformities are not increased.

He stated that the existing front yard setback does not conform to the required setback of 19.8 feet and is currently set back by 3.8 feet. He further stated that the proposed addition would have a front yard setback of 17 feet and 1 inch.

Additionally, Attorney Allen stated that relief was sought from the provisions of **Section 5.52** for the fourth-floor deck that is set back approximately 8'-6 1/2" from the front lot line. He stated that relief from the provisions of **Section 5.60** for the side yard setback was also sought. He stated that a setback of 17 feet is required and the existing side yard setback is 5.4-feet and 0-feet (because the building is attached to another building). He stated that the side yard setbacks of the existing portion of the building will remain unchanged, and the side yard setbacks of the fourth floor addition are proposed to be 6'-1" on the driveway side and 6" on the attached side. He added that relief is also sought pursuant to **Section 5.62** for the four-floor deck and noted that it is proposed to be setback 1'-1" and added that the roof top deck would be set back 7'-8". Finally, Attorney Allen stated that relief is sought pursuant to **Section 5.70** for the rear yard setback. He stated that a 30-foot setback is required and the existing and proposed is 21.4-feet. He noted that the addition above the building has a proposed rear setback of 22'-10".

Attorney Allen then discussed the requested parking relief. He stated that as 50 Vernon Street is located in the Transit Parking Overlay District (TPOD), there is only one parking space required per unit, bringing the total required parking to five spaces. He noted that the Planning Board report had used an outdated way of calculating the parking requirement. Therefore, Attorney Allen stated, no relief was required for the number of spaces. Attorney Allen stated that setback relief was requested under **Section 6.04.5.B** to waive the setback requirement for the driveway and parking areas. He stated that there is a required setback of five-feet and the existing condition ranges as

low as zero-feet. He stated this existing condition will however be greatly improved with the new landscaping improvements proposed.

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 multifamily residential in an M-district and the addition is consistent with this use. 2) Use will not adversely affect the neighborhood: The addition has been setback from the front of the building to preserve the massing of the existing building and streetscape. 3) There will be no nuisance or serious hazard to vehicles or pedestrians: Improvements are being made to the existing parking condition where cars park in a hodge podge mess in the back. The proposed conditions will clean up the parking area, create some greenery and delineate clear parking spaces. 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 Fund.

Chair Meiklejohn then called for public comments in support of or in opposition to the proposal. Susan Granoff, Town Meeting Member Precinct 7, took the opportunity to express her support for the project. Attending the meeting as a trustee of the 52 Vernon Street Condominium Trust (the "Trust"), Susan conveyed her positive outlook on the proposed major renovation and construction project, including the addition of a new fourth floor. Susan shared that she is an owner and occupant of Unit #1 and has been engaged in fruitful discussions with the Petitioner on behalf of the Trust. She stated that she was pleased that the Trust reached a private agreement with the Petitioner. Susan requested that the Board include the commitments made in the agreement as a condition of the Board of Appeals' decision.

Attorney Scott Gladstone, 822 Boylston Street in Brookline, also representing the Trust, praised the positive interaction between the Trust and the Petitioner as a model example for abutters. He fully supported their private agreement and urged the Board of Appeals to include the agreed-upon conditions, particularly regarding the construction management plan, in their decision. Attorney Gladstone emphasized the importance of upholding these conditions for efficient project execution and as a precedent for future abutter interactions.

Lori Popescu, residing at 52 Vernon Street, Unit #2, expressed her change of stance regarding the proposal. She stated that due to the commitments made by the Petitioner, she no longer opposes the project and requested the Board of Appeals to include the agreed-upon conditions. Mishal Desai, also residing at 52 Vernon Street, Unit #2, expressed appreciation for the commitments made by the Petitioner. Mishal stated that they have no objections to the requested relief, indicating their support for the project.

Elliott Doxer, a resident of Park Street, shared his perspective on the matter. He stated that from his unit, he has a view of the building in question. He expressed opposition to the aesthetics of the proposed project and expressed a preference for not having an addition above the building and he expressed concern that such changes would alter the character of the neighborhood.

Chair Meiklejohn 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**

**§5.31 - EXCEPTIONS TO MAXIMUM HEIGHT REGULATIONS**

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

**§5.50 - FRONT YARD REQUIREMENTS**

**§5.52 - FENCES AND TERRACES IN FRONT YARDS**

**§5.60 - SIDE YARD REQUIREMENTS**

**§5.62 - FENCES AND TERRACES IN SIDE YARDS**

**§5.70 - REAR YARD REQUIREMENTS**

**§6.01.2.A - GENERAL REGULATIONS FOR REQUIRED OFF-STREET PARKING FACILITIES**

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



§8.02 - ALTERATION OR EXTENSION - Front, Side, and Rear Yard Setbacks

<b>ZONING: M - 2.0</b>	<b>Requirements/Allowed</b>	<b>Existing Conditions</b>	<b>Proposed Conditions</b>	<b>Relief Required</b>
<b>Maximum Height</b>	50'	38'2"	46' (building grade) 59'10" (elevator penthouse) 54'10" (stair head house)	<u>Complies</u> <u>(question re stairs)</u>
<b>Minimum Front Yard Setback</b>	19.8'	3.8'	3.8'	<u>Special Permit*</u>
<b>Minimum Side Yard Setback</b>	17'	5.4'	5.4'	<u>Special Permit*</u>
<b>Fences And Terraces In Front Yards</b>	9.9' (front) 8.5' (side)	N/A	Roof Deck - 3.8' (front) 5.4' (side) Portico - 0' (front)	<u>Special Permit*</u>
<b>Minimum Rear Yard Setback</b>	30'	21.4'	21.4'	<u>Special Permit*</u>
<b>Required Parking Spaces</b>	10	6	5	<u>Special Permit*</u>

\*Under Sec. 5.43, all of the dimensional requirements may be waived by special permit if counterbalancing amenities are provided.

**§4.08 AFFORDABLE HOUSING REQUIREMENTS:** This project will result in the property having an additional unit, for a total of five units. Therefore, the applicant must comply with the town's affordable housing regulations by either having at least 15% of the units be affordable or by making a cash payment to the Town's Housing Trust Fund.

**§5.31 EXCEPTIONS TO MAXIMUM HEIGHT REGULATIONS:** According to §5.31.1: Substantial rooftop structures such as observation towers, elevator penthouses and mechanical equipment shall not exceed the height limit by more than 10 feet unless a special permit is granted by the Board of Appeals.

**§5.52 FENCES AND TERRACES IN FRONT YARDS:** The portico comes up to the lot line. In addition, uncovered porches or decks (such as the roof deck here) may not extend into the yard more than fifty per cent of the required yard setback but in no case closer than six feet to the property line.

**§5.62 FENCES AND TERRACES IN SIDE YARDS:** Uncovered porches or decks (such as this roof deck) may not extend into the yard more than fifty per cent of the required yard setback but in no case closer than six feet to the property line

**§6.01.2.A GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES:** Whenever there is an alteration of a structure or a change or extension of a use which increases the parking requirements by 15 percent or more according to the standards of §6.02 and §6.05, the total additional parking requirements for the alteration, change, or extension shall be provided in accordance with the requirements of that section. In 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 of §6.02 and §6.05. However, the Board of Appeals by special permit under Article IX may reduce or eliminate the minimum number of parking spaces required under §6.02 and §6.05.

**§6.04.5.B DESIGN OF ALL OFF-STREET PARKING FACILITIES:** In M-1.0, M-1.5, M-2.0, and M-2.5 Districts, the surfaced area of a parking lot and all entrance and exit drives shall be set back a minimum of 10 feet from all street lot lines and 5 feet from all other lot lines except where an access driveway crosses the street lot line. Such setback shall be 12 and 7 feet respectively where 2 feet of setback area is included in minimum stall depth as provided in paragraph 2, subparagraph b. of this section. Such setback area shall be landscaped and maintained, subject to §5.45.

#### **PLANNING STAFF COMMENTS**

Ms. Anthony stated that the additional new floor is well-designed and will not detract from the architectural style of the building because it is significantly set back from the front façade, and the proposed interior reconfigurations will provide residents with updated living space. She noted that this substantial renovation of the building also provides an additional living unit and a cash payment to the Affordable Housing Trust Fund.

#### **PLANNING BOARD COMMENTS**

Ms. Anthony stated that the Planning Board is generally supportive of adding a floor for a new unit in this property. However, she noted, the Board does recommend that the roof deck be made smaller with the railing pulled back from the building edges and that one of the stair houses be removed. Ms. Anthony stated that the location for storing the trash and recyclable bins should be added to the plans and parking should be reconfigured to facilitate maneuvering.

Ms. Anthony therefore stated that the Planning Board recommends approval of the site plans by Boston Survey Inc., PLS, dated 9/23/22 and architectural plans by Hendren Associates, dated 9/27/2022, 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. The perimeter of the roof deck should be stepped back and one of the roof stair houses removed.
2. 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. The counterbalancing amenities which shall include at least one tree must be executed in accordance with the approved plan.
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 Meiklejohn then turned to Paul Campbell, the Deputy Building Commissioner, and requested his comments on behalf of the Building Department. Mr. Campbell responded by presenting the Board with a list of necessary documents that are typically required for the issuance of a building permit for projects similar to the one under consideration, including building reports that would investigate the structural integrity of the building. He further noted that adding additional conditions beyond those recommended by the Planning Board would be unnecessary and outside the usual scope of the Board of Appeals' review process. Mr. Campbell suggested that adhering to the existing recommended conditions would be sufficient in this case.

The Board then engaged in deliberations. Chair Meiklejohn respected the stance presented by the Building Department regarding the exclusion of additional documentation from the Board of Appeals decision. He explained that these specific concerns are typically addressed during the building permit process rather than within the purview of the Board of Appeals. He clarified that the zoning matter being discussed does not encompass considerations of the structural integrity of buildings. Chair Meiklejohn stated that the requested dimensional relief could be granted through a special permit, given that sufficient counterbalancing amenities are provided. These amenities, as demonstrated on a landscaping plan, serve as evidence that the project adheres to the necessary conditions and aligns with the requirements for obtaining the special permit.

Board Member Oge expressed his support, stating that the Petitioner had provided substantial documentation that satisfies the standards outlined in **Section 9.05**. The Board reached a consensus to amend the Planning Board's conditions to align with the revised proposal. The Board also acknowledged that their decision must adhere to the restrictions imposed by the building code.

Board Member Wishinsky emphasized that while there is no requirement for an addition to be invisible from the street, it should still fit within the neighborhood. He highlighted that the setback of the proposed addition minimizes its impact and helps it blend in. Board Member Wishinsky also praised other positive aspects of the project, such as improvements to the site, appropriate parking spaces, additional housing, and a contribution to the Trust Fund. He concluded by stating that the proposal meets the standards under **Section 9.05**. Chair Meiklejohn concurred.

The Board then determined, by unanimous vote, that the proposal met the requirements for a special permit pursuant to **Sections 5.05, 5.43 and 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.** The Board also granted special permit relief waiving the parking requirements of **Section 6.02.1.B.**

In addition, the dates for the approved architectural plans were updated to and the survey were updated to June 17, 2023 and June 1, 2023, respectively. 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.

At the conclusion of the board's deliberations, Chair Meiklejohn made a motion to approve the requested relief subject to revised conditions [detailed below], which was seconded by Board Member Wishinsky , and on a roll call the members voted unanimously in favor of the motion.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following revised 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, subject to approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities which shall include at least one tree must be executed in accordance with the approved plan.

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



Randolph Meiklejohn, Chair  
Zoning Board of Appeals

Filing Date: 7/20/2023

A True Copy  
ATTEST:



Benjamin Kaufman  
Clerk, Board of Appeals