



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. 2023-000015
1026 COMMONWEALTH AVE

Petitioner, 1026 Commonwealth Av. LLC, applied to the Building Commissioner for a building permit to reconfigure interior space to create four additional units, for a total of 19 units. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed June 15, 2023 at 7:00 p.m. as the date and time for a virtual hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to its attorney 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 6/1/2023 & 6/8/2023 in the *Boston Herald*, a newspaper published 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, June 15, 2023

Location: Virtual Hearing

Virtual Registration Link: bit.ly/43uU6Lq

Petitioner: 1026 Commonwealth Av., LLC

Address: 1026 Commonwealth Ave

Subject: Alter building from 15 units to 19 units

Nature of Action/Relief:

§4.08 - AFFORDABLE HOUSING REQUIREMENTS

§8.02 - ALTERATION OR EXTENSION

Plans and submissions may be viewed online at

<https://www.brooklinema.gov/DocumentCenter/Index/4237>

Interested persons may provide comments at the public hearing or by submitting written comments by email to

manthony@brooklinema.gov.

Assistive Listening Devices are available upon request:

<https://www.brooklinema.gov/560/Americans-With-Disabilities-Act-ADA>

Publish: 6/1/2023 & 6/8/2023

Present at the June 15, 2023 hearing were Chair Randolph Meiklejohn and Board Members Wadner Oge and Neil Wishinsky. The case was presented by Chair Meiklejohn.

Attorney Jeffrey P. Allen, attorney for the Petitioner, waived the reading of the public notice and provided an overview of the proposed project. Attorney Allen suggested that this is a simple case. He explained that the only zoning relief needed is affordable housing, which is being handled by a cash payment through the affordable housing staff and affordable housing board. Attorney Allen explained that this is a building that was originally permitted for fifteen residential units and one office. He stated that it currently has one studio, six one-bedroom units, and one office. Attorney Allen explained that the Petitioner is seeking to convert three of the one-bedroom units into six studios, and convert the office into a studio. Attorney Allen stated that this will result in 16 studios and three one-bedroom units. Attorney Allen explained that there are no external modifications being made to the building; it the proposed changes are all internal. Attorney Allen stated that it got a little confusing before the Planning Board because they wanted to have three units converted for only 18 units instead of 19. Attorney Allen said

that this is because the Planning Board thought that one unit would not have windows, but that is not true. Attorney Allen stated that the 19th unit has windows, except in the kitchen and the bathroom and it is a legal unit under the state building code. Attorney Allen said that, in this day-and-age when creation of new housing along MBTA routes is considered desirable, this is exactly what we should doing. He stated that the Petitioner is seeking to add four new units right on the MBTA B branch of the Green Line and these are going to be lower rents than you see in other areas of Brookline. Attorney Allen stated that this is a “win-win.” Attorney Allen pointed out that, when this building was originally permitted for the ten units, there was a requirement for ten parking spaces. Attorney Allen explained that, in the history of this building, only one tenant has rented a parking space. Attorney Allen stated that this speaks to the fact that people who choose to live in such proximity to the “T” do not really need parking. Attorney Allen asked that the conversion to 19 units be approved.

Chair Meiklejohn asked the Board members if they had questions for Attorney Allen. Board Member Wishinsky stated that he wished to confirm that the unit that the Planning Board objected to does, in fact, meet the requirements of the state building code. He asked if Deputy Building Commissioner Campbell might comment on that. Deputy Building Commissioner Campbell stated that he did not do a building code review, but he also indicated that the Building Department would not issue a building permit if this unit conversion did not comply. Thus, Deputy Building Commissioner Campbell stated that he was comfortable with the conversion of the units. Chair Meiklejohn invited Board Member Oge to ask any questions he may have. Board Member Oge stated that he wanted know if the Petitioner is proposing any counterbalancing amenities. Chair Meiklejohn questioned what section of the By-Law would require that given the specifics of this case, and explained why a counterbalancing amenity

would not be required. Attorney Allen stated that, in any event, the payment to the affordable housing trust is a benefit to the Town and, given the mandates requiring additional housing, the rents on the units will change when they are converted. Attorney Allen stated that these were benefits. Board member Oge suggested that an overview of the design changes might be in order. Attorney Allen explained that the Petitioner was proposing to take the six one-bedroom units, adding kitchens and bathrooms, and making them studios. The plans were submitted to the Board and the members were able to review them.

Chair Meiklejohn asked if there were members of the public who wished to speak in favor or against this application. No one from the public indicated they wished to speak on the matter.

Chair Meiklejohn called upon Zoning Coordinator/Planner Madison Anthony to review the findings of the Planning Board.

FINDINGS

§4.08 - AFFORDABLE HOUSING REQUIREMENTS

§8.02 - ALTERATION OR EXTENSION

PLANNING DEPARTMENT COMMENTS

The proposal meets all dimensional and parking requirements and needs special permits only for affordable housing since new units are being created. The latter will be met through a cash payment to the Brookline Housing Trust. No changes will be made to the exterior building envelope. No additional parking will be created for this project and per Section §6.02.2.H the existing 12 parking spaces meet the parking requirements for residential use development in the Transit Parking Overlay District (TPOD). At least 1 parking space should be handicap accessible. Parking for the ground floor retail spaces is not mandatory since storefront uses located in the TPOD are not subject to minimum parking requirements.

PLANNING BOARD COMMENTS

The Planning Board is generally supportive of this proposal which will create more units near transit and contribute to the Housing Trust Fund. However, the Board is concerned about the habitability of the unit occupying the storefront office space and the basement due to the lack of natural light. There are also concerns regarding discrepancies between the plans and the rear

elevation. Therefore, the Board recommends approval of the plans excluding the aforementioned unit and suggests the applicant submit corrected plans and elevation and a site plan addressing the discrepancies.

The Planning Board recommends approval of the architectural plans prepared by RAV & ASSOCIATES INC., PE, dated February 9, 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, to the Assistant Director for Regulatory Planning for review and approval. Revised plans shall delete the 19th unit - the conversion of the office space in the front to a residence, provide corrected plans and elevations for the rear of the building, and provide a site plan.
2. Prior to the issuance of a building permit, the owner shall execute a mortgage, escrow agreement, letter of credit or other documentation approved by the Director of Planning and Community Development to secure the cash payments required by this condition.

Prior to the issuance of a Certificate of Occupancy, per Section 4.08 of the Zoning By-law and "Cash Payments in Lieu of Affordable Units" guidelines approved by the Planning Board on January 7, 2021, the applicant shall make a cash payment to the Town of Brookline to be deposited in the Brookline Housing Trust Fund: a sum equal to 3.6% of the Market Value of the property (as determined by the Assessor's Department of the Town per the Town's guidelines for "Cash Payment in lieu of Affordable Units") provided to the Town of Brookline in the form of a bank check, certified check or a check drawn on an Attorney Client's Fund Account, payable to the Brookline Housing Trust.

The check should be mailed by first class mail or hand delivery to:
Director of Planning & Community Development
333 Washington Street – 3rd Floor
Brookline, MA 02445

Should the property be subsequently converted and sold as condominiums, the developer or subsequent owner shall make an additional trust payment as a condition of a transfer of each condominium, calculated per the Town's guidelines for "Cash Payment in lieu of Affordable units"

3. Prior to the issuance of a building permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan, floor plans, and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning; and b) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.
Chair Meiklejohn asked Ms. Anthony about the plans to confirm the date. Deputy

Building Commissioner Paul Campbell showed the plans dated February 9, 2022 to the Board.

Mr. Campbell commented that, with respect to the issue regarding natural light in one of the units, the building code allows artificial light and mechanical ventilation to satisfy the building code requirements. Mr. Campbell reviewed the plans with the Board.

Chair Meiklejohn requested that Deputy Building Commissioner Paul Campbell present the findings of the Building Department. Mr. Campbell stated that the Building Department has no objection to the requested relief. Mr. Campbell stated that, should the Board grant the requested relief, the Building Department will work with the Petitioner to ensure compliance with the Board's decision, the Zoning By-Law, and applicable codes.

Chair Meiklejohn invited deliberation from the Board. Board Member Wishinsky stated that this is a good proposal. He was satisfied that the unit that the Planning Board commented on will in fact need to meet the requirements of the building code. Board Member Wishinsky suggested deleting of the last sentence of the first suggested condition. Mr. Campbell added that a building code review will be done before issuance of a permit. Board Member Wishinsky stated that he would be in favor of approving the 19th unit, which the Planning Board did not approve of. Board Member Oge agreed and supported what Mr. Wishinsky said.

At the conclusion of the board's deliberations, Chair Meiklejohn made a motion to approve the requested relief subject to 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 special permit relief and approve the project as reflected in the architectural plans prepared by RAV & ASSOCIATES INC., PE, dated February 9, 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, to the

Assistant Director for Regulatory Planning for review and approval.

2. Prior to the issuance of a building permit, the owner shall execute a mortgage, escrow agreement, letter of credit or other documentation approved by the Director of Planning and Community Development to secure the cash payments required by this condition.

Prior to the issuance of a Certificate of Occupancy, per Section 4.08 of the Zoning Bylaw and “Cash Payments in Lieu of Affordable Units ” guidelines approved by the Planning Board on January 7, 2021, the applicant shall make a cash payment to the Town of Brookline to be deposited in the Brookline Housing Trust Fund: a sum equal to 3.6% of the Market Value of the property (as determined by the Assessor ’s Department of the Town per the Town ’s guidelines for “Cash Payment in lieu of Affordable Units ”) provided to the Town of Brookline in the form of a bank check, certified check or a check drawn on an Attorney Client’s Fund Account, payable to the Brookline Housing Trust.

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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