



BOARD OF APPEALS  
Jesse Geller, Chairman  
Johanna Schneider  
Lark Palermo

# *Town of Brookline*

## *Massachusetts*

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2023-00021  
21 REGENT CIRCLE  
BROOKLINE, MA

Petitioner, 21 Regent Circle LLC, applied to the Building Commissioner for permission to convert the existing building to seven dwelling units at 21 Regent Circle. 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals, and fixed June 22, 2023, at 7:00 p.m. virtually as the time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, 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 June 8, 2023, and June 15, 2023, in the 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 22, 2023**

**Location: Virtual Hearing**

**Virtual Registration Link: [bit.ly/45MbGfT](https://bit.ly/45MbGfT)**

**Petitioner: 21 Regent Circle LLC**

**Address: 21 Regent Circle**

**Subject:** Convert existing building to seven dwelling units

**Nature of Action/Relief:**

§4.08 - AFFORDABLE HOUSING REQUIREMENTS;§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS;§5.60 - SIDE YARD REQUIREMENTS;§6.02.1.B – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES;§8.02 - ALTERATION OR EXTENSION

*Plans and submissions may be viewed online at*

<https://www.brooklinema.gov/DocumentCenter/Index/4266>

*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: 6/8/2023 & 6/15/2023**

On June 22, 2023, the Brookline Zoning Board of Appeals held a virtual public hearing. Present at the hearing were Zoning Board Chair Jesse Geller and Board Members Randolph Meiklejohn and Wadner Oge. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., RLAW P.C., 300 Washington Street, Second Floor, Brookline, Massachusetts. Also in attendance was the project architect, Lucio Trabucco, Nunes Trabucco Architects, 315 Chestnut Street, Needham, Massachusetts.

Zoning Board of Appeals Chair Geller called the hearing to order at 7:00 pm. Chair Geller reviewed the standard hearing procedure for virtual hearings and confirmed that all Board Members and staff could visually and auditorily engage in the hearing. Attorney Allen waived a reading of the published notice.

Attorney Allen presented the case on behalf of the Petitioner. Attorney Allen stated that the proposal involves converting an existing two-family dwelling into a seven-unit building located at 21 Regent Circle. He noted that the property is situated in the M-1.5 Zoning District and is conveniently located off Beacon Street, with the Tappan Street T-stop just a 0.2-mile walk away. Attorney Allen further noted that the neighborhood primarily consists of medium to large multi-family buildings, as well as other two-family buildings. He added that the seven units in

the proposed building would be modestly sized in comparison to some of the larger luxury condominium units being constructed in the area. Additionally, Attorney Allen stated, the conversion would allow for the preservation of an existing historical structure that dates back to 1880.

In terms of community engagement, Attorney Allen mentioned that the Petitioner had reached out to several abutters, and one letter of support had been submitted to the Board of Appeals. Attorney Allen stated that the rear of the building is used for parking and the parking would be improved by the addition of landscaping and electric vehicle charging stations. He noted also that bicycle parking would be provided in the basement.

Attorney Allen proceeded to describe the trash management plan for the building. He explained that there is an easily accessible space in the basement dedicated to housing trash bins and that a property management team will be responsible for moving the bins to the designated trash pick-up location on a weekly basis. Furthermore, he stated that the property management team will monitor the volume of trash to ensure the appropriate amount of trash capacity for the property.

Mr. Trabucco proceeded to present the architectural drawings and site plan. He provided a detailed explanation of the proposed floor plans, highlighting the layout and design of the units. Additionally, he pointed out the designated parking area on the site plan. Furthermore, Mr. Trabucco emphasized that no alterations would be made to the exterior of the building. He specifically mentioned that the existing structure already has sufficient egress for the basement area, as there is currently a unit located there. He then described the landscaping plan and noted that the existing trees will be preserved and noted additional plantings.

Attorney Allen then reviewed the requested zoning relief. He stated that special permits were requested under: **Section 4.08** of the Zoning By-Law for affordable housing and stated that

a payment would be made to the affordable housing trust; **Section 5.09** of the Zoning By-Law for design review triggered because of the number of units, though no exterior changes were proposed; **Section 5.05** of the Zoning By-Law for the conversion from a two-family to a seven-unit building to legalize the preexisting nonconforming side yard setback of 14.9-feet where 16.61-feet is required; **Section 6.01 2.a** of the Zoning By-Law allowing a reduction or elimination in the number of parking spaces required when as here the use of a structure is converted. He stated the request is to allow the waiver of three parking spaces and noted that a total of seven parking spaces would be required and four were proposed. Attorney Allen opined that **Section 6.02.1.b** of the Zoning By-Law cited in the Planning Board report was not applicable due to the nature of the proposal being a conversion. Attorney Allen stated that in any case, the proposal provided sufficient counterbalancing amenities and the Petitioner was amenable to the relief for violation of the required setbacks being granted under **Section 5.43** of the Zoning By-Law.

Attorney Allen then reviewed the special permit requirements enumerated in **Section 9.05**, of the Zoning By-Law stating the following: 1) Specific site is an appropriate location for such use: The property is located in a M-1.5 Multifamily zoning district and the proposed use of seven units is an allowed use within this zoning district and this type of conversion to increase density within existing buildings is encouraged in this zoning district; 2) Use will not adversely affect the neighborhood: The conversion will have minimal to no impact on the existing streetscape and the landscaping improvements will have a positive impact on the neighborhood and streetscape; 3) No nuisance or serious hazard to vehicles or pedestrians: the existing parking area will be used by the same number of cars with access to the rear alleyway; 4) Adequate and appropriate facilities will be provided for the proper operation and proposed use; 5) Development will not have any effect on the supply on housing available for low and moderate

income people. This project would add modestly sized units to the Town’s housing stock and a cash payment to the Town’s Housing Trust.

Chair Geller then called for public comments in favor of or opposition to the proposal. Linda Ashley, Resident Beaconsfield Road, stated that she did not understand how seven units could fit in the existing building. She inquired where residents would park and if the alleyway would be improved.

Chair Geller then called upon Madison Anthony, Planner and Zoning Coordinator, to deliver the reports of the Planning Department and Board:

FINDINGS

§4.08 - AFFORDABLE HOUSING REQUIREMENTS

§5.05 - CONVERSIONS

§5.09.2.D – DESIGN REVIEW

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.60 - SIDE YARD REQUIREMENTS

§6.02.1.B – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES

§8.02 - ALTERATION OR EXTENSION

ZONING: M-1.5	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Side Yard Setback	16.61 ,	14.9 ,	14.9 ,	<u>Special Permit</u> <sup>1</sup> Existing nonconformity
Off-Street Parking Spaces	7	4	4	<u>Special Permit</u> <sup>2</sup>

<sup>1</sup> Under **Section 5.43, Exceptions to Yard and Setback Regulations**, a special permit may waive a yard setback if a counterbalancing amenity is offered. *Landscaping is being offered to serve as a counterbalancing amenity, though the proposed changes are all interior and they do not exacerbate the already nonconforming setback.*

<sup>2</sup> Under **Section 6.02.1.b, General Regulations Applying to Required Off-Street Parking Facilities**, a special permit may reduce or eliminate the minimum parking requirements for residential uses, as listed, if the reduction or elimination of minimum parking requirements

accomplishes significantly more usable and/or landscaped open space than required by the Zoning By-Law or other material counterbalancing amenities as determined appropriate by the Planning Board and Zoning Board of Appeals. *The proposal provides 3% more landscaped open space and 2.8% more usable open space than required.*

**Section 4.08.3.a, Affordable Housing Requirements** – As a condition to granting any special permit for projects that, upon completion, will have four or more dwelling units and at least one new unit will be created, applicants should comply with the Affordable Housing Requirements under **§4.08**. *This project is creating five additional units for a total of seven units.*

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

**Section 5.09.2.d, Design Review**: A Special Permit for Design Review is required for exterior alterations, additions, and modifications or changes to multiple dwellings with four or more units on the premises. *No exterior changes are being proposed.*

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

#### **PLANNING STAFF COMMENTS**

Ms. Anthony stated that staff is pleased with this project, which will have little to no impact on the neighborhood while increasing the housing supply in Brookline. She stated that the proposed conversion will not create any changes to the building exterior and noted that the parking area is currently paved, and no additional paving is required. EV charging stations will also be provided. Ms. Anthony stated that after the conversion, the property would still comply with all the other dimensional requirements and only requires relief for parking. She added that the property is located between two MBTA Green Line Stations and the applicant ensures two more street parking spaces.

#### **PLANNING BOARD COMMENTS**

Ms. Anthony stated that the Planning Board is supportive of this proposal but is concerned about adequate storage of trash and recycling. Therefore, she noted, the Board suggests an additional condition to require trash storage inside the building to minimize the

amount of trash and recycling containers that would be required with the additional number of units.

Ms. Anthony stated that the Planning Board recommends approval of the architectural plans prepared by TRABUCCO ARCHITECTS, RA, dated September 22, 2022, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations of the garage, 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. Final plans shall adequate interior storage for trash and recycling facilities.
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 or designee. The counterbalancing amenities must be executed in accordance with the approved plan.
3. 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.
4. 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"

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 of the garage displaying the approval stamp of the Assistant Director for

Regulatory Planning; and b) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

Chair Geller then called upon Ms. Anthony to deliver the findings of the Building Department. Ms. Anthony stated that the Building Department would work with the Petitioners to ensure conformance with the Board's decision and all applicable building codes.

During the deliberation, Board Member Meiklejohn expressed support for preserving the historic structure and granting the requested relief, particularly given the property's proximity to public transportation. He commended the execution of the project in adding units and mentioned that the proposed amenities and proposal adequately met the requirements of **Section 9.05** of the Zoning By-Law. Board Member Oge agreed with Meiklejohn's sentiments, emphasizing that the project would contribute to increasing the Town's housing supply and viewed it as a positive addition.

Chair Geller agreed with Board Members Meiklejohn and Oge, highlighting that the project fulfilled the criteria outlined in **Sections 9.05, 5.05, and 5.43** of the Zoning By-Law. The Board then determined, by unanimous vote, to grant a special permit pursuant to **Section 4.08** Affordable Housing, **5.05** Conversions, and **5.09.2.d** Design Review. The Board additionally granted a special permit to waive three parking spaces pursuant to **Section 6.02.1.a** and to waive the provisions of **Section 5.62** for side yard setbacks pursuant to **Section 5.43, 5.05** and **9.05** of the Zoning By-Law.

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

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



- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will not have any effect on the supply of housing available for low- and moderate-income people.

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

1. Prior to the issuance of a building permit, the applicant shall electronically submit final floor plans and elevations of the garage, 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. Final plans shall evidence adequate interior storage for trash and recycling facilities.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan indicating all counterbalancing amenities, including but not limited to, significantly more usable and landscaped open space subject to review and approval by the Assistant Director for Regulatory Planning or designee. The counterbalancing amenities must be executed in accordance with the approved plan.
3. 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.
4. 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.

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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"

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 of the garage 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

**AUG 24 2023**

  
Jesse Geller, Chairman

Filing Date: \_\_\_\_\_

A True Copy  
ATTEST:



\_\_\_\_\_  
Benjamin Kaufman  
Clerk, Board of Appeals