



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0024
72 DAVIS AVENUE, LLC
72 DAVIS AVENUE, BROOKLINE, MA

Petitioner, 72 Davis Avenue, LLC, applied to the Building Commissioner for permission to demolish an existing dwelling and construct two attached single family townhouses. The application was denied and an appeal was taken to this Board.

The Board 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 May 12, 2016 at 7:30 p.m., in the Selectmen's Hearing Room 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 28, 2016 & May 5, 2016 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

Notice of Hearing

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at: **72 DAVIS AVE – DEMOLISH EXISTING SINGLE-FAMILY DWELLING AND CONSTRUCT TWO ATTACHED SINGLE-FAMILY DWELLINGS, in a T-5, Two-Family and attached Single-Family, residential district, on**

May 12, 2016, at 7:30 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: 72 DAVIS AVENUE LLC C/O OSBORNE CHARLES) Precinct 6

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

- 1. Section 4.07: Table of Use Regulations Use #5**
- 2. Section 5.43: Exceptions to Yard and Setback Regulations**
- 3. Section 5.50: Front yard Requirements**
- 4. Section 5.60: Side Yard Requirements**
- 5. Section 5.70: Rear Yard Requirements**
- 6. Section 6.04.5.c.1: Design of All Off-Street Parking Facilities**
- 7. Any Additional Relief the Board May Find Necessary**

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

*The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in Town programs and services may make their needs known to **Robert Sneider**, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneider@brooklinema.gov.*

*Jesse Geller, Chair
Christopher Hussey
Jonathan Book*

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members Christopher Hussey and Kate Poverman. Jay Rosa was also present on behalf of the Planning Department and the Building Department. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was the Manager and principal of and the architect for the Petitioner, Charles Osborne, and the landscape architect, Antonia Bellalta. Attorney Allen stated that the proprietor is also the architect.

Zoning Board of Appeals Chairman Geller called the hearing to order at 7:30 pm.

Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the Petitioner resides at 74 Davis Avenue and owns the subject property at 72 Davis Avenue. Attorney Allen continued that the subject property is located in the T-5 District, west of Davis Path. The surrounding neighborhood has a diverse, eclectic range of home designs including modern row houses. Mr. Allen commented that the Petitioner intends to demolish the existing home at 72 Davis Avenue and that the Preservation Commission made a determination of significance and placed an 18 month stay on demolition of the property. Mr. Allen noted that the Petitioner comes before the Zoning Board of Appeals with the unanimous support of the Planning Board and that the Petitioner worked with the neighbors for a number of years to design this proposal. As a result of this collaborative efforts with the neighborhood, the Petitioner received 37 signatures in support of this proposal.

Charles Osborne reviewed the existing and proposed site plans and elevations and indicated that the proposed project offers parking for 5 cars. He noted that the strategy was to locate the townhouses toward the southeast corner of the lot. He indicated that this was done within the dimensional constraints of the existing lot.

Mr. Osborne described the existing 12 foot wide sewer easement and the required setbacks for parking as challenges that dictated the most appropriate location to site the proposed townhouses. Mr. Osborne stated that parking requirements under **Section 6.04.5.c.2** of the Zoning By-Law require five parking spaces. For these reasons, Mr. Osborne stated that the townhouses are slipped to break up the massing of the building and to identify each town house individually. To fulfill the parking requirements, Mr. Osborne stated that three cars will be situated on the east of the townhouses and two cars will be situated to the north of the property.

He noted that a central feature of the townhouses was to provide an entry on the street, providing the townhouses with an address on White Place, which is otherwise unavailable to the existing dwelling.

Mr. Osborne informed the Board that the design aims to respond to the public and private realm of the neighborhood. Mr. Osborne indicated that, at the suggestion of the Planning Board, he separated the walkway from the entry to the westerly townhouse and incorporated two curb cuts rather than one large curb cut to address any vehicular safety concerns. He also noted that the cars maintain a 6 foot setback from the sidewalk.

Mr. Osborne stated that the carports will shelter the cars from the elements and will also shield the cars from the street. The carports are garden-like structures constructed out of wood and lined with vines. He stated that the Petitioners will add extensive landscaping on site. Mr. Osborne also stated that the pop out on the front façade is to create scale and to accommodate the dimensional pressures of bathroom facilities and stairs. He indicated that there will be a shared deck on the third floor and there will be a parapet on the roof which will provide shelter for the condensers.

Mr. Osborne concluded his presentation with a review of the schematic plans and rendered perspectives. He noted that he incorporated oversized shingles and clapboards to mimic the features on some of the neighboring homes on Davis Path and White Place. He indicated that the townhouses will create a less daunting pedestrian zone than that which exists.

Board Member Poverman questioned the means of egress for vehicles exiting the property. Mr. Osborne stated that an engineering study was conducted to determine the turning radius necessary. Mr. Osborne indicated that he reviewed the proposed parking arrangement with

Peter Ditto, Engineering and Transportation Director. He stated that the proposed parking arrangement is a safer, more functional option.

Board Member Hussey asked about the articulation of the setbacks. Mr. Osborne indicated that the setbacks were based on the Building Department's determination of front and rear lot lines and noted that the property has two front yards as defined by the By-Law: on White Place and on Davis Path. Mr. Osborne stated that under **Section 5.40** of the Zoning By-Law, where a wall of a building is not parallel with its corresponding lot line, at least 3/4 of the required distance, 11'-3" minimum for a 15' front setback in this case, must be maintained. He stated that the carport near Unit A necessitates front yard relief, the carport near Unit B necessitates side yard relief and Unit B requires rear yard relief.

Board Member Poverman asked Mr. Osborne to identify the 8 foot fence on the property. He stated that the 8 foot fence is nonconforming and is on the existing site plan. He indicated that the existing fence will be replaced by a 7 foot fence on the property line, which will conform to building codes.

Attorney Allen reiterated that the Petitioner worked on this proposal with the input of the community. He then described relief from application of the provisions of **Sections 5.50, 5.60,** and **5.70** of the Zoning By-Law by special permit pursuant to **Section 5.43** and under **Section 9.05** : (1) the specific site is an appropriate location for such use where the townhouses fit into the mixed housing arrangements in the neighborhood; (2) there will be no adverse effect as evidenced by 37 neighbors having expressed support; (3) no nuisance or serious hazard to vehicles or pedestrians will be created because the proposed carport arrangement allows for sufficient turning space and has been reviewed and approved by the Engineering and Transportation Director; (4) adequate and appropriate facilities will be provided for the proper

operation; and (5) the development will not have a significant adverse effect on the supply on housing available for low and moderate income people.

Finally, Mr. Allen discussed relief under **Section 5.43** of the Zoning By-Law, which allows the Board of Appeals to waive front, side, and rear yard setback requirements if a counterbalancing amenity is provided. He stated that the Petitioner has submitted a landscaping plan and that the landscaping will serve as the required counterbalancing amenity. In furtherance of the counterbalancing amenities provided, the Petitioner has also offered to install significant landscaping improvements on an adjacent parcel owned by the Town of Brookline and maintain the landscaping.

Board Member Poverman questioned why the Petitioner decided to build despite The Preservation Commission's determination of significance. The Petitioner indicated that he believes that the existing home is not functional and the proposed project is more inviting and a viable addition to the neighborhood.

Board Chairman Geller called for public comment in favor of, or in opposition to, the Petitioner's proposal.

Annette Born, 50 White Place, Apt. #1, spoke in favor of the proposal. She stated that the proposed project is in concert with the street. She stated that White Place is eclectic and has a variety of home styles including single-family homes, carriage houses, multi-family homes and condominiums.

Philip Kramer, 84 Davis Avenue, stated that this project is a great addition to the neighborhood. He commended the Petitioner on his outreach to the neighborhood in designing the proposal.

Seth Barrett of 50-52 Davis Avenue stated that the existing house is set far back from the front property line and the parking lot is pressed against the Davis Path stairs. Noting that the current structure is unattractive, he stated the proposed project will better incorporate the improvements into the streetscape.

Jay Rosa, Zoning Coordinator for the Town of Brookline Planning Department, delivered the findings of the Planning Board:

FINDINGS:

1. Section 4.07 – Table of Regulations, Use #5 – (attached dwellings)
2. Section 5.43- Exceptions to Yard and Setback Regulations
3. Section 5.50- Front Yard Requirements
4. Section 5.60- Side Yard Requirements
5. Section 5.63- Accessory Structures in the Side Yards (Carport)
6. Section 5.70- Rear Yard Requirements
7. Section 6.04.5.c.2- Design of All Off-Street Parking Facilities

Dimensional Requirements	Required	Existing	Proposed	Relief Required
Front Yard Setback (Carport/Unit A)	15'	--	6.5''	Special Permit *
Rear Yard Setback (Unit B)	30'	1.8'	7'	Special Permit *
Side Yard Setback (carport/Unit B)	10'	--	5'	Special Permit *

Under Section 5.43, the Board of Appeals may waive by special permit yard and/or setback requirements, if a counterbalancing amenity is provided.

Mr. Rosa stated that the Planning Board has no objection to the project of the two attached townhouses. The design of the project is not inconsistent with the surrounding neighborhood. Planning Board members were satisfied with the counterbalancing amenities provided as far as landscaping new trees, proposed plantings and the proposed fence. He stated that there was some concern from the Planning Board with respect to the tandem parking originally proposed. He noted that the two curb cuts were added in response to the Planning Board's recommendation.

The Planning Board acknowledged that White Place is a one-way street moving toward Davis Avenue and that the site lines are manageable.

Therefore, the Planning Board recommended approval of the site plan and elevations by Charles Osborne, dated 4/26/2016, subject to the following conditions.

- 1) Prior to the issuance of a building permit, the applicant shall submit a final site plan and elevations, with materials indicated, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 2) Prior to the issuance of a building permit, the applicant shall submit a final landscaping and fencing plan, subject to the review and approval of the Assistant Director of Regulatory Planning
- 3) Prior to the issuance of a building permit, the applicant shall submit a construction management plan, subject to the review and approval of the Building Commissioner, with a copy to the Planning Department.
- 4) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds.

Mr. Rosa, on behalf of the Building Department, stated that the Building Department has no objections to this proposal. The lot is unique with two front yards, two rear yards, and one side yard.

The Building Department interprets the carports as accessory structures. Mr. Rosa confirmed that the 8 foot fence is existing, and that the Building Department will work with the Petitioner to ensure compliance with the 7 foot fence requirement, all imposed conditions, and relevant building codes should the Board find the requirements for the grant of special permits are met.

The Board then deliberated on the merits of special permit relief as requested. Mr. Hussey stated that the architecture is consistent with the eclectic nature of White Place and is worthy of the requested relief under **Section 9.05** of the Zoning By-Law. Ms. Poverman concurred with these statements.

Chairman Geller stated that he was in favor of the requested zoning relief.

The Board then determined, by unanimous vote that the requirements for special permits from application of the provisions of Sections 4.07, 5.50, 5.60, 5.70, and 6.04.5.c.1 of the Zoning By-Law pursuant to Section 5.43 and 9.05 of the Zoning By-Law were met.

The Board made the following specific findings pursuant to said Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- 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 submit a final site plan and elevations, with materials indicated, subject to the review and approval of the Assistant Director of Regulatory Planning.
- 2) Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities including a fencing plan, subject to the review and approval of the Assistant Director of Regulatory Planning
- 3) Prior to the issuance of a building permit, the applicant shall submit a construction management plan, subject to the review and approval of the Building Commissioner, with a copy to the Planning Department.
- 4) Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor; 2) final building elevations and floor plans stamped and signed by a registered architect; and 3) evidence the decision has been recorded at the Registry of Deeds.

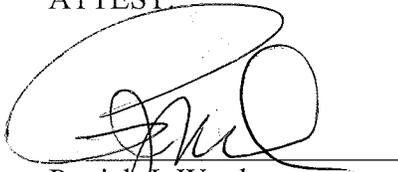
Unanimous Decision of
The Board of Appeals

Filing Date: 6/21/16



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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