

Jesse Geller, Chairman
Mark Zuroff
Johanna Schneider

Town of Brookline

Massachusetts

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Benjamin Kaufman, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-000065
50-52 DAVIS AVENUE
BROOKLINE, MA

ASSOCIATED DECISION:
54 DAVIS AVENUE #2021-000066

Petitioner, Griggs Investments LLC, applied to the Building Commissioner for zoning relief that would allow the Petitioner to construct a new single-family home on the newly subdivided lot having a street address of 54 Davis Avenue. 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 January 6, 2022, 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 December 23, 2021, and December 30, 2021, 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 **virtual** public hearing on **January 6, 2022** at **7:00PM**

Register for this hearing by clicking on the link:

<https://bit.ly/3GE1vfS>

After registering you will receive a confirmation email containing information about joining the hearing.

Our Virtual Meeting Guide for Applicants and the Public can be found here:

<https://bit.ly/30wRoY3>

50-52 Davis Avenue, MA 02445 – Subdivide lot and construct a dwelling on a new lot Pct. 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:

§5.43 – EXCEPTIONS TO YARD AND SETBACK REGULATIONS

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

§6.04 – DESIGN OF ALL OFF-STREET PARKING FACILITIES

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

§6.04.6 – DESIGN OF ALL OFF-STREET PARKING FACILITIES

Any other relief the Board finds necessary

QUESTIONS, PUBLIC COMMENT FILES, PDFs OR PRESENTATIONS:

*Advance 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 **Monique Baldwin (mbaldwin@brooklinema.gov)**.*

*All plans and submissions may be found at: <https://aca-prod.accela.com/Brookline/Default.aspx>. An account is **NOT REQUIRED** to access materials. 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 or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at mbaldwin@brooklinema.gov, or by checking the Town meeting calendar at: www.brooklinema.gov.

The Town of Brookline does not discriminate in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer.

*If you have any questions regarding **Assistive Listening Devices**, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.*

*Jesse Geller, Chair
Mark Zuroff
Johanna Schneider*

Publish: 12/23/2021 & 12/30/2021

On January 6, 2022, at 7:00 pm, the Brookline Zoning Board of Appeals held a virtual public hearing. Present at the hearing were Zoning Board Chair Jesse Geller and Board Members Johanna Schneider and Mark Zuroff.

The Petitioner's attorney, Robert L. Allen, RLAW, P.C., 300 Washington Street, Brookline, Massachusetts, waived a reading of the public hearing notice for the record. Also in attendance was the project architect, Philip Kramer, Philip Kramer Architect, 4 Cypress Street, Brookline, Massachusetts.

Attorney Allen introduced the proposal to construct a new single-family dwelling to the rear of the subdivided subject parcel. Attorney Allen stated that the existing building is a two-family home and the current residents were looking for a solution to stay in their home and to restore it. He further stated that the proposal has broad neighbor support and noted that 23 signatures have been provided to the Board in support. He stated that the proposal is located in the T-5 Residential Zoning District and, while the goal of the project was to be as compliant as possible, some minor special permit relief is required. He then added that the new single-family home will be located on a part of the parent lot currently used for parking. He added one thing that was important to the abutters was to remove some existing weed trees along the property.

Mr. Phil Kramer, project architect, reviewed the site plan showing the existing parking area that will be reduced from approximately thirteen parking spaces to six organized along the side yard fence. In reliance on a digital presentation, Mr. Kramer described the surrounding neighborhood and the proposal. He stated that the new home was designed to look like a carriage house. He continued that the existing lot will be subdivided into an oddly shaped lot designed to

minimize the zoning relief required. He pointed out on the site plan where rear setback zoning relief is needed noting that, after discussion with the Planning Board, the parking spaces were widened which requires a front yard setback to 11'9". Mr. Kramer then reviewed the proposed landscaping plan, including the proposed parking spaces, the location of the neighbor's fence that screens the abutting lot from headlight glare and a planting bed proposed at the front of the new lot.

Upon inquiry from Board Member Zuroff, Attorney Allen noted that the Zoning By-Law requires a five-foot setback for the parking spaces and clarified that the existing condition includes cars at a zero-foot side yard setback which will be retained, though the number of spaces will be reduced. Attorney Allen added that a cross easement will be required benefitting and burdening the two successor parcels and anticipates an ownership association to address maintenance, repair and costs associated with the easement area.

Attorney Allen then reviewed the zoning relief required for 50-52 Davis Avenue and the new lot known as 54 Davis Avenue. Attorney Allen stated that special permit relief is sought for 50-52 Davis Avenue pursuant to **Section 6.03.1.B** of the Zoning By-Law to allow parking on another lot and under **Section 6.04.5.e** of the Zoning By-Law to establish a common driveway. He stated that a special permit is also sought for 54 Davis Avenue pursuant to **Section 6.04.5.e** of the Zoning By-Law to allow for a common driveway.

Attorney Allen noted that additional setback relief is sought for 54 Davis Avenue including: wherein the required side yard is 7.5' and the proposed is 5', and the required rear yard setback is 30' and 8.6' is proposed. Attorney Allen then noted that relief is also sought for the parking spaces, though added that the parking is an existing nonconforming condition. Pursuant to **Section 6.04.5.C**, front yard setback relief is sought for the parking setback where 15' are required and 11.7' and for the side yard setback where 10' are required and a setback of 0' is proposed.

Attorney Allen stated that setback relief can be granted through **Section 5.43** of the Zoning By-Law if a counter balancing amenity is provided. He stated that comprehensive landscaping is proposed including cutting back existing trees that block the existing two-family at 50-52 Davis Avenue and noted that a final landscaping plan will be subject to the review and approval of the Assistant Director of Regulatory Planning. He added that this proposal also maintains a historic home and added that will be a benefit to the community.

Attorney Allen stated that the proposal will meet all of the requirements for a special permit under **Section 9.05**: 1) Specific site is an appropriate location for such use: The subdivision of the existing lot at 50-52 Davis Avenue to allow for the creation of a new single-family home is appropriate site as both the two-family home and single-family are allowed uses in the T-5 Zoning district. 2) Use will not adversely affect the neighborhood: The proposed single-family has received 23 neighbors in support of this proposal, including all the surrounding abutters, we have a positive Planning Board report and are able to accomplish our goal by only asking for minimal special permit relief, relief that mostly impacts our own property. The new home has been designed sensitively to fit into the neighborhood. No opposition has been voiced during the process. 3) There will be no nuisance or serious hazard to vehicles or pedestrians: The property's on-site circulation will not cause a nuisance or serious hazard to vehicles or pedestrians. The shared driveway has been in use and accommodating more than ten cars, which will be reduced to a safer number of six cars and improved driveway design and markings. We've agreed to widen the parking spaces at the request of the Planning Board to address their concern about the cars being able to park and open doors. 4) Adequate and appropriate facilities will be provided for the proper operation and proposed use: Adequate and appropriate facilities will be provided. The Petitioner will create a mutual easement for the driveway and parking area prior to the issuance of a building permit. 5) There will be no effect on the supply on housing available for low- and moderate-income people

Chair Geller then called for public comments in favor of the proposal. No comments were submitted in support of the proposal.

Chair Geller then called for public comments in opposition to the proposal. No comments were submitted and no one spoke in opposition.

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

FINDINGS

ZONING: T-5	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Lot Size	5,000 sf	11,513 sf	6,571 sf	
Use	2-Family Dwelling	2-Family Dwelling	2-Family Dwelling	
FAR	1.0 / 100%	0.48 / 48% 5,563sf	0.97 / 97% 6,368 sf	
Lot Frontage	20'	96.35'	70.35'	
Maximum Height	35'	unchanged	unchanged	
Front Setback	15'	18.8'	18.8'	
Side Yard Setback (Left / Right)	10' / 10'	15.5' / 35'	15.5' / 10'	
Rear Setback	30'	50'	30'	
Open Space				
> Landscaped	10% / 637sf	33% / 1,820sf	17% / 1,082sf	
> Usable	30% / 1,911sf	46% / 2,545sf	36% / 2,275sf	
Parking	4	13	4	

Other Zoning Relief Needed

Section 6.03.1.b, Location of Required Off-Street Parking Facilities: This section requires that all required off-street parking facilities be provided on the same lot or premises with the principal use served. Where this requirement cannot be met, the Zoning Board of Appeals may authorize within the same district required parking on any lot in the same ownership within 400

ft., subject to some assurance of permanence as it may deem adequate. The applicant is proposing to provide the required 4 spaces on the neighboring lot (to be created as part of this application). The Board should confirm that 50-52 Davis Avenue will be granted an easement to permanently utilize the driveway and parking at 54 Davis Avenue.

Section 6.04.5.c, Design of All Off-Street Parking Facilities: The parking stalls proposed on the new lot (54 Davis Avenue) that will serve the existing building at 50-52 Davis Avenue do not comply with the required front yard setback (15' required vs. 13.7' proposed) nor the required side yard setback (10' required vs. 0' proposed). Relief from this section can be granted through Section 5.43, which allows the Zoning Board of Appeals to waive setback requirements if the applicant offers a counterbalancing amenity that fulfills the same purpose as would have been fulfilled by the provision of the required setback area.

Section 6.04.6, Design of All Off-Street Parking Facilities: This section requires that abutting properties be shielded from illumination on parking lots and the headlights of vehicles by providing specific landscaping strips, fencing, or other buffers. Since the proposed parking has no setback, there is no protection from parking-related lighting. One way the applicant might comply with this section would be by installing a fence.

PLANNING DEPARTMENT COMMENTS

Ms. Baldwin stated that the Planning Department has some concerns with this proposal which is inextricably linked to the proposal for 54 Davis Avenue. Staff is primarily concerned with the effects of the new parking and driveway on the mature trees on the site. A significant number of mature maples and oaks are proposed to be removed, although staff recognizes that the maples are an invasive species. The trees that are proposed to remain do not seem to be sufficiently protected from construction activity or the future use of the site, and the landscape plan is inadequate in terms of new trees to be planted. Some of the trees to be removed appear to be located on the property adjacent to the new lot, and it is not clear to staff whether the abutter would agree to this removal.

Staff recommends that, before the Planning Board issues a recommendation, the applicant submit a better tree protection plan that shows the preservation of the existing trees, where possible, and a much more robust planting plan that replaces the removed trees with new trees of comparable quality. Lastly, the applicant's landscape plan should show the installation of a fence along the right property line at 54 Davis Avenue to shield lighting from the vehicles.

The applicant has suggested that the driveway serving the six parking spaces is entirely located on the proposed lot at 54 Davis Avenue. It is Planning staff's opinion that the driveway width on 54 Davis Avenue will be insufficient to fully accommodate vehicles maneuvering in and out of the parking spaces and that such vehicles will need to use a portion of the paved area of 50-52 Davis Avenue for circulation. Therefore, both projects should be cited for a common driveway (Section 6.04.5.e) and mutual easements should be established as a condition of the issuance of a Special Permit.

Staff has no concerns with the alterations to the existing building at 50-52 Davis Avenue and the new building at 54 Davis Avenue, and recommends that the building at 54 Davis Avenue be fossil-fuel-free.

PLANNING BOARD RECOMMENDATION

Ms. Baldwin stated that the Planning Board is supportive of the proposal. Although some members of the Board expressed minor concerns with the design of the new building at 54 Davis Avenue, the Board feels that the new building is reasonably well designed. The Board is also pleased with the proposal in that it enables the preservation of an existing two-family dwelling, provides EV charging, proposes a new fossil-fuel-free building, and revitalizes the site's landscaping. The Board made some suggestions regarding paving surfaces and drainage but did not require anything from the applicant in that regard.

Ms. Baldwin stated that the Planning Board recommends approval of the site plan by D. O'Brien Land Surveying, dated 9/28/21, and architectural plans by Philip Kramer Architect LLC, dated 7/26/21. The Planning Department recommends 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/owner shall submit evidence to the Building Commissioner and Assistant Director for Regulatory Planning that a plan dividing the lot in a manner consistent with the approved plans (listed above) has been approved by the Planning Board and recorded at the Norfolk County Registry of Deeds.
3. Prior to the issuance of a building permit, the applicant/owner shall submit evidence to the Building Commissioner and Assistant Director for Regulatory Planning that an easement establishing a common driveway has been recorded at the Norfolk Registry of Deeds.
4. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan that shows proposed counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be executed in accordance with the approved plan.
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 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.

Ms. Baldwin reviewed conditions for 50-52 Davis Avenue and 54 Davis Avenue and noted that they are slightly different from the Planning Board's recommended conditions since some conditions were not applicable to both properties.

Chair Geller then called upon Deputy Building Commissioner, Paul Campbell, to deliver the opinion of the Building Department. Mr. Campbell stated that the Building Department has no objection to the relief requested and will work with the Petitioner to ensure compliance with the Zoning Board's decision and the state building codes.

The Board then deliberated on the merits of the application. Board Member Schneider stated that the proposal is a creative solution to allow this family to stay in their home and generate needed housing and noted the zoning relief requested appears to be minor and sufficient counterbalancing amenities have been proposed. Board Member Zuroff concurred. Chair Geller stated

that this a great project and this neighborhood has lovely homes and appreciated the effort taken to preserve and restore the existing home.

The Board voted unanimously to grant a special permit under **Section 6.03.1.B** of the Zoning By-Law to allow parking on another lot and under **Section 6.04.5.e** of the Zoning By-Law to establish a common driveway.

The Board made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

- 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. The development as proposed will not have a significant adverse effect on the supply of housing available for low- and moderate-income people.

Accordingly, the Board voted unanimously to grant special permit relief, subject to the following revised conditions for 50-52 Davis Avenue:

1. Prior to the issuance of a building permit, the applicant shall electronically submit a final site plan and deck plans to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant/owner shall submit evidence to the Building Commissioner and Assistant Director for Regulatory Planning that a plan dividing the lot in a manner consistent with the approved plans (listed above) has been approved by the Planning Board and recorded at the Norfolk County Registry of Deeds.
3. Prior to the issuance of a building permit, the applicant/owner shall submit evidence to the Building Commissioner and Assistant Director for Regulatory Planning that a mutual easement has been recorded at the Norfolk Registry of Deeds that establishes a common driveway and delineates the six parking spaces. Said easement shall designate a specific number of parking spaces for 50, 52 and 54 Davis Avenue.
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 and deck plans

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

Filing Date: 2/3/22


Jesse Geller, Chair

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals