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**Town of Brookline**  
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**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Christopher Hussey  
Jonathan Book

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Brookline, MA 02445-6899  
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2013-0038  
DAVID & KATRINA DRISCOLL

Petitioners, David and Katrina Driscoll, applied to the Building Commissioner for permission to construct an addition to the existing structure at 15 Berkley Court thereby converting it into a two-family residence. The application was denied and an appeal was taken to this Board.

On May 9, 2013 the Board met and 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 20, 2013 at 7:45 p.m. in the Selectmen's hearing room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to their 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 June 6, 2013 and June 13, 2013 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

Petitioners: **David & Katrina Driscoll**

Owner: **David & Katrina Driscoll**

Location of Premises: **15 Berkley Court**

Date of Hearing: **June 20, 2013**

Time of Hearing: **7:45 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup> Floor**

A public hearing will be held for a variance and/or special permit from:

- 1. Section 5.01: Table of Dimensional Requirements, Usable Open Space**
- 2. Section 5.43: Exceptions to Yard & Setback Regulations**
- 3. Section 5.50: Front Yard Requirements**
- 4. Section 5.55: Front Yard for Rear Lot**
- 5. Section 5.70: Rear Yard Requirements**
- 6. Section 6.02, Paragraph 1: Table of Off-Street Parking Space Requirements**
- 7. Section 6.04.5.c.1 Design of All Off-Street Parking Facilities - Parking Area Setback**
- 8. Section 6.04.5.c.2: Design of All Off-Street Parking Facilities - Parking Area Setback**
- 9. Section 6.04.12: Design of All Off-Street Parking Facilities**
- 10. Section 8.02: Alteration or Extension**

of the Zoning By-Law to construct an addition to the existing converting it into a two-family residence.

Said premise located in a **T-5 district**.

*Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.*

*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 programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.*

**Jesse Geller  
Christopher Hussey  
Jonathan Book**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jonathan Book, and Board Members Christopher Hussey and Mark

Zuroff. The case was presented by the attorney for the petitioners, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance were David Driscoll, owner of 15 Berkley Court and Philip Kramer, the petitioners' architect.

Zoning Board of Appeals Chairman Jonathan Book, called the hearing to order at 8:45 p.m. Attorney Allen stated that the petitioners proposed to construct an attached single-family for a second dwelling unit. Attorney Allen presented to the Board a history of the property, stating the Planning Board reviewed this proposal in June 2012, whereby a number of concerns were raised regarding parking and site access and how the new dwelling would be attached to the existing building. Attorney Allen stated that in response to the Planning Board's concerns the petitioners hired a new architect and developed a construction management plan. Attorney Allen reported that the petitioners come with unanimous support of the Planning Board and without opposition from the neighbors.

Attorney Allen presented to the Board a background of the property, stating 15 Berkley Court is the last house on a private way off of Davis Avenue. Attorney Allen stated the property is a two-and-a-half story single-family dwelling with a walkout basement. Attorney Allen stated 15 Berkley Court is the only single-family dwelling and surrounded by properties mixed in nature: two-family dwellings, a parking lot used by multi-family and commercial properties; a parking garage/medical office. Attorney Allen stated the petitioners' goal is to construct a new attached single-family dwelling to the side of the existing dwelling to create a second unit on the property. Attorney Allen stated the new dwelling would be attached to the existing dwelling's northwest corner, with no interior connection between the units, and separate egresses.

Attorney Allen stated the new 2,321 square foot addition is modest and the relief requested by the petitioners is extremely minimal. Attorney Allen stated dimensional relief is required because the new attached single-family dwelling is a rear structure, the front yard must be equal to the rear yard, requiring a 30-foot front yard setback. Attorney Allen stated a construction management plan was completed to appease abutting neighbor concerns regarding traffic on Berkley Court. In addition, Attorney Allen stated the petitioners request a variance to eliminate one of the parking spot requirements at the suggestion of the Planning Board. Attorney Allen recognized the neighborhood's concern that five parking spaces would be excessive where the driveway is already narrow, and space limited.

The architect Philip Kramer, of 84 Davis Avenue, Brookline, Massachusetts presented the site plan, stating the proposal includes a two-and-a-half-story house with a walk out basement, and four parking spaces. Mr. Kramer detailed the landscaping plan and included as counterbalancing amenities: the replacement of vinyl siding on the existing house with wood clapboard and period appropriate trim, which will match the new house.

Zoning Board Member Mark Zuroff inquired whether the calculated floor area includes the walk out basement. Mr. Kramer explained the floor area includes the portion of the basement that is not mechanical space. Chairman Jonathan Book asked if ingress and egress from the driveway would interfere with the immediate abutters' access to parking. Mr. Kramer described the angle of the driveway and explained that the turning radius only requires a two-point turn to exit the driveway. Furthermore, Attorney Allen identified a private way used by neighbors to make the two-point turn.

Zoning Board Member Christopher Hussey asked Mr. Kramer to point out the five parking spaces and asked whether the proposed landscaping in the front of the driveway counted

toward the landscaped open space requirements. Attorney Allen responded that the open space requirements were met prior to this proposal. Zoning Board Member Hussey commented on the possibility of avoiding the variance by not using the fifth space. Attorney Allen agreed and stated that out of respect for the neighborhood, the petitioners requested a variance. Zoning Board Member Hussey asked Mr. Kramer to explain the usable open space in the basement. Mr. Kramer explained that the Zoning By-Laws permit 25% of required open space to be interior as long as 40% of its wall surface is lower.

Attorney Allen resumed his presentation to the Zoning Board of Appeals. Attorney Allen asked for special permit relief for **Section 5.50**, **Section 5.55**, **Section 5.70**, and **Section 8.02.2** of the Zoning By-Law. Attorney Allen stated that under **Section 5.43** of the Zoning By-Law if counterbalancing amenities are provided. Attorney Allen discussed counterbalancing amenities including the replacement of the chain-link fence with a wood fence, installation of wood clapboard in place of the vinyl siding, and removal of pavement for additional landscaping.

Attorney Allen discussed relief under **Section 8.02.2** of the Zoning By-Law, whereby a special permit is required under **Section 9.05** of the Zoning By-Law to alter and/or extend a non-conforming structure.

Attorney Allen discussed relief relative to the parking spaces under **Section 6.04.5.c.1**, **Section 6.04.5.c.2**, and **Section 6.04.12** of the Zoning By-Law. Attorney Allen stated that under **Section 6.04.12** of the Zoning By-Law, the Board of Appeals may permit in lieu of the dimensional requirements of Article 6, the substitution of other dimensional requirements when new parking facilities are being installed to serve existing structures and land uses. Attorney Allen stated that because the land use is changing from a single-family to a two-family, **Section 5.43** of the Zoning By-law permits the Board of Appeals to waive yard and setback requirements

by special permit in return for counterbalancing amenities. Attorney Allen reiterated the counterbalancing amenities and reminded the Board that Berkley Court is a private road and the house will be tucked around the corner with little impact to the general public.

As for **Section 9.05** of the Zoning By-Law, Mr. Allen noted: (1) the specific site is an appropriate location where it is in a T-5 District and is the only single-family home on Berkley Court; (2) there will be no adverse affect to the neighborhood; (3) no nuisance or serious hazard to vehicles or pedestrians exists; (4) adequate and appropriate facilities will be provided for the proper operation, which the petitioners ensured by hiring a new architect and working on the construction management plan for the past year; and (5) development will not have a significant adverse effect on the supply of housing available for low and moderate income people, rather it will be a reasonably priced unit compared to others in Brookline Village.

Attorney Allen reiterated the Planning Board's unanimous support of the proposal. Attorney Allen reminded the Board of the numerous letters of support submitted by abutting neighbors and noted that any opposition now, exclusively relates to the construction period. Attorney Allen discussed the petitioners' effort to minimize the traffic concerns during construction through a reasonable construction management plan. Attorney Allen described the petitioners' dedication to ensuring the construction management plan be executed in a timely fashion.

Finally, Attorney Allen discussed relief relative to the parking variance to reduce the required parking from five to four off-street spaces. Attorney Allen stated that the original site plan showed five parking spaces, but because the existing driveway is tight and the medical building directly abuts the property line, the petitioners agreed to seek a variance to reduce the number of spaces. Attorney Allen stated the relevant portion of M.G.L. c. 40A, Section 10

regarding the Board's authority to grant a variance. Attorney Allen stated the lot is clearly unique and submitted to the board a map of the T-5 zoning district. Attorney Allen stated the property is wedged-shaped, completely landlocked, and the medical office building creates a large brick wall directly on the property line significantly reducing the ability to use the driveway. Attorney Allen stated the current parking is and always has been in front of the house. In addition, Attorney Allen stated the shape of the lot and the fact that it is wedged and landlocked causes a substantial hardship preventing new parking from being created. Attorney Allen stated a literal enforcement of **Section 6.04** of the Zoning By-Law would require three-tandem parking. Given the proximity of the property to the Green Line, Attorney Allen stated that the desired relief may be granted without substantial detriment to the public good and may benefit the neighbors allowing less vehicles be stored in the driveway.. Attorney Allen stipulated four parking spaces would really be three and one guest space, which would appease concerns addressed by the neighborhood and planning, such that the desired relief may be granted without substantial detriment to the public good, without nullifying or substantially derogating from the intent or purpose of the Zoning By-Law.

The Board Members then asked several questions about the proposal. Zoning Board Member Christopher Hussey inquired about ownership regarding the private driveway accessed by the neighborhood. Attorney Allen explained the property is communal. Zoning Board Member Mark Zuroff inquired as to whether the petitioners hired a contractor and whether they signed on for the construction management plan. Attorney Allen responded that the petitioners identified two contractors interested in the development and that the petitioners will be taking a leave of absence from his job to oversee the project. Attorney Allen remarked that the neighbors

wanted to be able to communicate any concerns and as the project manager, the petitioners will be to field any questions, comments, or concerns throughout the project.

Zoning Board of Appeals Chairman Jonathan Book asked if anyone present wanted to speak in favor of the application. Linda Keaveney, 18 Berkley Court, spoke in favor of the construction management plan and her trust in the petitioners to make sure every effort is made to squash any issues that may arise. George Vien, 16 Davis Avenue, spoke in favor of the petitioners' diligence throughout the process. Gordon Bennett, 55 Davis Avenue, spoke in support of the petitioners' idea to stage the construction materials to avoid traffic on Berkley Court. Leo Sorokin, 100 Davis Avenue, spoke in favor of the proposal and that it was an addition to the dense character of the neighborhood. Brendan Downey, 61 Davis Avenue, echoed support for the plan and the petitioners' consideration of the neighbors.

Zoning Board of Appeals Chairman Jonathan Book asked if there was anyone present who wished to speak in opposition of this application. No one spoke in opposition.

Chairman Book then called upon Polly Selkoe, Assistant Director for Regulatory Planning, to deliver the comments of the Planning Department.

**FINDINGS**

**Section 5.01 – Table of Dimensional Requirements, Usable Open Space**

**Section 5.43 – Exceptions to Yard and Setback Regulations**

**Section 5.50 – Front Yard Requirements**

**Section 5.55 – Front Yard for Rear Lot**

**Section 5.70 – Rear Yard Requirements**

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Floor Area Ratio (% of allowed)</b>	1.0 (100%)	0.565 (56.5%)	0.975 (97.5%)	Complies
<b>Floor Area (s.f.)</b>	5,662 s.f.	3,200 s.f.	5,521 s.f.	
<b>Front Yard Setback*</b>	30'	N/A	9'11"	Special Permit**/ Variance

<b>Rear Yard Setback</b>	30'	21'3"	15'3"	Special Permit**/ Variance
<b>Usable Open Space</b>	1,656 s.f. (30% GFA)	2,360 s.f.	1,761 s.f.	Complies
<b>Landscaped Open Space</b>	552 s.f. 10% GFA	1,033 s.f.	944 s.f.	Complies

\*Under *Section 5.55*, when a dwelling is to be located on a rear lot, as in this case, the front yard depth shall not be less than the minimum rear yard specified in *Table 5.01* of the Zoning By-law. \*Under *Section 5.43*, the Board of Appeals may waive yard and setback requirements if counterbalancing amenities are provided. The applicant has indicated new fencing and landscaping and the restoration of architectural details on the existing single-family, such as the removal of vinyl siding, installing new trim, etc., would be provided as counterbalancing amenities.

**Section 6.02, Paragraph 1 – Table of Off-Street Parking Space Requirements**

**Section 6.04.5.c.1 – Design of All Off-Street Parking Facilities: Parking Area Setback Requirements**

**Section 6.04.5.c.2 – Design of All Off-Street Parking Facilities: Parking Area Setback Requirements**

**Section 6.04.12 – Design of All Off-Street Parking Facilities**

<b>Parking Requirements</b>	<b>Required</b>	<b>Proposed</b>	<b>Relief</b>
<b>Parking Spaces</b>	5	4	Variance
<b>Front Yard Setback</b>	15'	0'	Special Permit†/Variance
<b>Side Yard Setback</b>	10'	0'	Special Permit†/Variance

\*Under *Section 6.04.12*, the Board of Appeals may permit in lieu of the dimensional requirements of Article 6, the substitution of other dimensional requirements when new parking facilities are being installed to serve existing structures and land uses. However, since the land use is changing with this proposal from a single-family to a two-family dwelling, *Section 5.43* waiving yard and setback requirements by special permit in return for counterbalancing amenities would be more appropriate relief for the proposed parking arrangement.

**Section 8.02.2 – Alteration or Extension**

A special permit is required to alter a pre-existing non-conforming structure or use.

Mrs. Selkoe stated the Planning Department is not opposed to the proposal to construct a new attached single-family dwelling to the existing single-family dwelling. The applicant has responded positively to the Planning Board's comments on the previous proposal, and the Planning Board is much more comfortable with the revised plans. Although the addition will be quite large for a relatively small site, the Planning Board supports a reasonable expansion of this property, and several of the surrounding properties are two-family dwellings. The proposed parking has been revised to only have four parking spaces rather than five, which is sufficient for

a two-family dwelling near public transit even though it requires zoning relief. The revised parking arrangement is more realistic than the previous proposal in that vehicles are more likely to use the parking area in accordance with the plan rather than park on the private way. Ms. Selkoe further stated that the landscape plan reflects changes requested by the staff, including the removal of pavement and installation of landscaping behind the proposed guest parking space, although lawn may not be the best type of plant for that area if it is not more extensive. Additionally, existing trees that are expected to remain should be shown on the plan, and some more significant screening landscaping at the rear would be appropriate. The Planning Board appreciates the new picket fence to replace the existing chain link. The plan does not clearly indicate where new mechanical equipment will be located, but it should not be located near residential neighbors. The other proposed counterbalancing amenities, such as restoring the clapboard siding, trim and rake details for the existing single-family, will go far to improve the appearance of the development as seen from its neighbors. Further, Ms. Selkoe stated that since this site will be difficult to develop, the submitted construction management plan, dated 3/15/2013, is key to the Planning Board supporting the proposal, and was strongly supported by the neighborhood at the Planning Board meeting. Although the Planning Board believes some aspects of the construction process, such as excavation and storage of materials, are not adequately considered in the plan, it works very hard to avoid any disruptions to the neighborhood. If any changes to this plan are made, neighbors should be notified in advance. Additionally, any damage to Berkeley Court due to construction shall be the responsibility of the applicant to repair in kind prior to receiving a new certificate of occupancy for the dwelling.

Therefore, should the Board of Appeals determine the application meets the statutory requirements for a variance, the Planning Board recommends approval of the proposal and plans,

including the site plan by Boston Survey dated 2/28/2013, the landscape plan by Nawada Landscape Design Inc. dated 6/1/2013, and the plans and elevations by Frank Janusz and Philip Kramer, dated 6/1/2013, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans and building elevations, existing and proposed, indicating all salient dimensions and exterior materials, 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 site and parking plan, indicating all paved areas and mechanical equipment locations, 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 final landscape plan, indicating all plant types and sizes, hardscape areas, and counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.
4. Prior to the issuance of a building permit, a final construction management plan, including details regarding the parking of construction vehicles, the delivery of materials, and the contact information for contractors, shall be submitted to the Building Commissioner for review and approval. Any damage to Berkeley Court due to construction related to this development shall be repaired prior to issuance of a Certificate of Occupancy.
5. Prior to the 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 stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Zoning Board of Appeals Chairman Book then called upon Michael Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. Mr. Yanovitch stated the Building Department did not have any objections to the request for special permit and variance relief. Mr. Yanovitch stated the petitioners' construction management plan practically eliminates the need for the fifth parking space. Mr. Yanovitch stated the petitioners satisfied 25 CMR of the fire code regarding the need to access the building. Mr. Yanovitch applauded the petitioners' construction management plan, but commented the timeline may need to be relaxed.

Finally, Mr. Yanovitch stated the building code may trigger sprinkler requirements in the event the structure is four stories.

In deliberation, Zoning Board of Appeals Member Mark Zuroff stated that **Section 5.43** of the Zoning By-Law Board provides enough latitude to grant special permit relief. In addition, Zoning Board Member Zuroff stated that the circumstances with 15 Berkley Court rise to the level of M.G.L. c. 40A, Section 10, thus the parking requirement should be waived where the neighborhood is dense and the lot uniquely wedged. Zoning Board Member Christopher Hussey concurred with Board Member Zuroff. Chairman Book stated the lot is unique in terms of slope and shape, and close to public transportation, thus relief should be granted under M.G.L. c. 40A, Section 10..

The Board then determined that variance and special permit relief from the requirements of **Section 5.01**, **Section 5.50**, **Section 5.55**, **Section 5.70**, **Section 6.02 (¶1)**; **Section 6.04.5.c.1**, **Section 6.04.5.c.2**, **Section 6.04.12**, and **Section 8.02.2** of the Zoning By-Law was desirable and appropriate. The Board agreed that the counterbalancing amenities are appropriately suited for the project. The Board made the following specific findings under said **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.

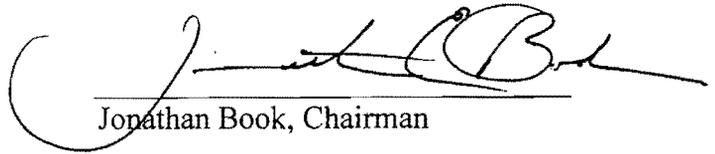
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans and building elevations, existing and proposed, indicating all salient dimensions and exterior materials, 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 site and parking plan, indicating all paved areas and mechanical equipment locations, 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 final landscape plan, indicating all plant types and sizes, hardscape areas, and counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.
4. Prior to the issuance of a building permit, a final construction management plan, including details regarding the parking of construction vehicles, the delivery of materials, and the contact information for contractors, shall be submitted to the Building Commissioner for review and approval. Any damage to Berkeley Court due to construction related to this development shall be repaired prior to issuance of a Certificate of Occupancy.
5. Prior to the 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 stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

Filing Date: July 18, 2013

RECEIVED  
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 Jonathan Book, Chairman

A True Copy  
ATTEST:

  
 Patrick J. Ward  
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