



# Town of Brookline

## Massachusetts

BOARD OF APPEALS  
Jesse Geller, Chairman  
Christopher Hussey  
Jonathan Book

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043  
Patrick J. Ward, Clerk

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TOWN CLERK  
2016 NOV 16 P 3

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2016-0062  
66 RISLEY ROAD

Petitioner, James Kessler, applied to the Building Commissioner for a building permit to install a backup generator at 66 Risley Road. 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 October 27, 2016 at 7:10 PM, in the 1<sup>st</sup> Floor, room 111 in Town Hall at 333 Washington Street as the date, time and place of a hearing for appeal. Notice of the hearing was mailed to the Petitioner, 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 October 13, 2016 and October 20, 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:

66 RISLEY ROAD – INSTALL A BACKUP GENERATOR in an a S-7 (Single-Family) Residence District, on OCTOBER 27, 2016 at 7:10 PM in the in the 1st Floor Room 111 in Town Hall, 333 Washington Street (Petitioner/Owner: James Kessler) *Precinct 16*

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 5.43: Exceptions to Yard and Setback Regulations
2. Section 5.63: Accessory Buildings or Structures in the Side Yard
3. Modification, as necessary, of BOA case #2010-0017, June 3, 2010
4. 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](http://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 programs and services of the Town of Brookline are invited to make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at [lgellineau@brooklinema.gov](mailto:lgellineau@brooklinema.gov)*

*Jesse Geller, Chair  
Christopher Hussey  
Jonathan Book*

At the time and placed specified in the notice, this Board held a public hearing. Present at the hearing was Board Chair Johanna Schneider and Board Members Jonathan Book and Mark Zuroff. Michael Yanovitch was present on behalf of the Building Department and Ashley Clark was present on behalf of the Planning Department. The Petitioner, James Kessler was present as well.

Mr. Kessler presented the application to install a backup generator at 66 Risley Road. Mr. Kessler stated he is seeking special permit for the side yard setback between his house and neighbors. Mr. Kessler stated there is a new wooden fence that shields the generator from the neighbors and described work they have done to the house to maintain and improve it.

Board Chair Schneider called for public comment in favor of, in opposition to, or in general to the Petitioner's proposal. There was no public comment.

Board Chair Schneider called upon Zoning Coordinator Ashley Clark from the Planning Department to review the findings of the Planning Board.

### FINDINGS

#### Section 5.43: Exceptions to Yard and Setback Regulations

#### Section 5.63: Accessory Buildings or Structures in the Side Yard

No part of any accessory building or structure situated within 75 feet of the street line shall extend within any required side yard. Elsewhere on the lot such buildings or structures may extend into the side yard one-half the required width, but such setback shall be no less than six feet. No accessory building or structure within a required side yard shall exceed 15 feet in height.

Dimensional Requirements	Allowed	Existing	Proposed	Relief
Accessory Structure	6 ft.	N/A	1.5 ft.	Special Permit*

\* Under Section 5.43, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided.

#### Modification, as necessary, of BOA case #2010-0017, June 3, 2010:

Modification of prior site plan to show generator.

Ms. Clark stated the Planning Board is supportive of this proposal to install a backup generator; many homes in Brookline have recently installed similar generators due to issues of frequent power loss. Ms. Clark stated that although most generators have been installed in rear yards, the Planning Board does not oppose this side yard location due to the existing screening. Ms. Clark noted, a condition has been added to ensure that the generator does not violate noise regulations.

Therefore, the Planning Board recommends approval of the site plan by Frank Iebba, dated 8/14/16, subject to the following conditions:

1. The decibel level of the proposed generator shall comply with all noise regulations under Section 8.15 of the Brookline General By-Laws.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counterbalancing amenities 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 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Board Chair Schneider requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated the Building Department has no objection to this request. Mr. Yanovitch stated in his opinion, the relief requested is minor in nature. Mr. Yanovitch stated the noise decibel level is exempt while it is running under emergency conditions, but does have to comply when it is exercising. Mr. Yanovitch stated that the proposed model is compliant with the noise regulations in Brookline. Mr. Yanovitch concluded stating, should the Board find the proposal meets the requirements for a special permit, the Building Department will work with the application to ensure compliance.

Mr. Kessler stated he and the direct neighbor have agreed upon Wednesday at noon for testing of the generator. Mr. Kessler stated this time will have the least impact for both parties. Additionally, Mr. Kessler stated that he has offered shelter for when there are power outages.

The Board then deliberated on the merits of a special permit relief requested. The Board felt the special permit relief was warranted as long as a counter balancing amenity was provided. After considerable discussion regarding the already existing screening, Mr. Kessler agreed to submit a landscaping plan indicating new plantings to satisfy the requirements under §5.43. Board Members Zuroff and Book as well as Board Chair Schneider were in support of granting the relief.

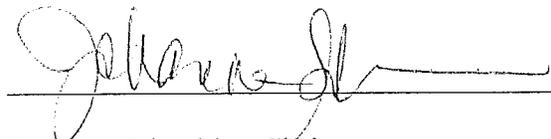
Accordingly, the Board voted unanimously to grant the requested special permit relief under

§5.43 of the Zoning By-Law, subject to the following amended conditions:

1. The decibel level of the proposed generator shall comply with all noise regulations under **Section 8.15** of the Brookline General By-Laws.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating new plantings 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 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

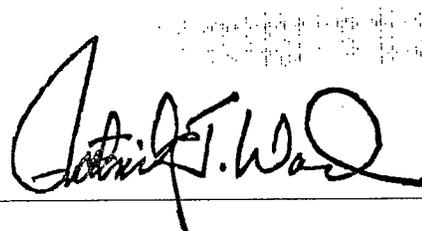
**Unanimous Decision of  
The Board of Appeals**

Filing Date: 11/16/16

  
\_\_\_\_\_  
Johanna Schneider, Chairman

A True Copy

ATTEST:

  
\_\_\_\_\_  
Patrick J. Ward

Patrick J. Ward

Clerk, Board of Appeals