



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark Zuroff
Christopher Hussey

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-000002
KERNER TRS JONATHAN H &
JENNIFER KAPLAN
63 PERRY STREET,
BROOKLINE, MA

Petitioner, Timothy Gaboury, applied to the Building Commissioner for permission to install three air-conditioning condenser units in the side yard to the south at 63 Perry Street. 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 February 8, 2018 at 7:00 PM., in the Select Board's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioners, 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 January 18, 2018 and January 25, 2018 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:

63 PERRY STREET, BROOKLINE, MA 02446 - Install (3) AC condensers at side yard in a(n) T-5 TWO-FAMILY & ATTACHED SINGLE-FAMILY on 02/08/2018 at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Timothy Gaboury) *Precinct 3*

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

§5.63 - ACCESSORY BUILDINGS OR STRUCTURES IN SIDE YARDS

§8.02.2 – ALTERATION AND EXTENSION

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 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 llgellineau@brooklinema.gov

*Jesse Geller, Chair
Christopher Hussey
Mark Zuroff*

Publish: 01/25/2018 & 02/01/2018

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members Steve Chiumenti and Randolph Meiklejohn. Also present at the hearing was Planner and Zoning Coordinator, Ashley Clark.

The case was presented by Mary Horst, Horst Buchanan Architects, 88 Prince Street, Second Floor, Jamaica Plain, Massachusetts 02130. Also in attendance was the Petitioner, Timothy Gaboury.

Chairman Geller called the hearing to order at 7:00 p.m. Ms. Horst waived the reading of the public notice.

Ms. Horst presented to the Board a background of the Petitioner's proposal, stating that 63 Perry Street is located in a T-5 zoning district within the Toxteth Neighborhood District. Ms. Horst stated that the Petitioner is proposing to install three air conditioner condenser units in the side yard lot on the south side of the property. Mr. Horst then stated that the Petitioner seeks special permit relief from the provisions of **Section 5.60** under **Section 5.43** of the Zoning By-Law. Ms. Horst argued that the Zoning Board of Appeals may waive setback requirements if a counterbalancing amenity is provided and noted that the Petitioner is proposing to install two bushes as screening to fulfill this requirement.

Upon inquiry from Board Member Chiumenti concerning noise from the units, Ms. Horst stated that the AC condenser units are located in the most logical place for the site and will need to meet the Noise By-Law requirements. Mr. Gaboury noted that the condensers are in the similar portion of the yard as those maintained by the abutter on his property. Additionally, Ms. Horst added the condensers utilize newer technology that allows the units to turn on in certain zones as needed rather than constantly fully operate.

Chairman Geller then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal.

Chairman Geller then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Chairman Geller then called upon Ashley Clark, Zoning Coordinator and Planner, to deliver the findings of the Planning Board. Ms. Clark noted the following:

FINDINGS

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Requirements

Setback	Allowed	Existing	Proposed	Finding
Side Yard (Accessory Structure)	6 feet	~3 feet	~3 feet	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.

Ms. Clark stated that the Planning Board is not opposed to this proposed location for additional air conditioner condenser units. She noted that the applicant already has one unit located in the same area and believes that this is the safest and most obscure location for additional units. Ms. Clark further stated that the adjacent property owner also has condenser units located on his side of the property line in the same area and the Planning Board would like to see additional screening installed in this area to minimize visual and noise impacts.

Therefore, Ms. Clark stated, the Planning Board recommends approval of the site plan dated 9/26/2017 by Bruce Bradford and elevation dated 11/7/2017 by Horst Buchanan Architects, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan and elevation, 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 landscaping plan indicating all counter balancing 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; 2) final floor plans and 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.

Chairman Geller then called upon Ms. Clark to deliver the comments of the Building Department.

Ms. Clark stated that the Building Department has no objection to the request for this relief. Ms. Clark

noted that the air conditioner units will need to meet the noise threshold requirement under the Noise By-Law. Therefore, Ms. Clark concluded that should relief be granted, the Building Department will work with the Petitioner to ensure compliance with the Building Code.

Upon inquiry from Board Member Meiklejohn, Ms. Clark stated that the Building Department has tools to measure decibel levels.

The Board then determined, by unanimous vote that the requirements for a special permit from **Section 5.60**, pursuant to **Section 5.43** and **Section 9.05** of the Zoning By-Law, respectively, were met finding specifically under said **Section 9.05**:

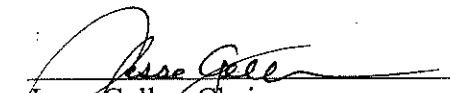
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will have no effect on the supply of housing available for low and moderate income people.

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

1. Prior to the issuance of a building permit, the applicant shall submit a final site plan and elevation, 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 landscaping plan indicating all counter balancing 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; 2) final floor plans and 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.

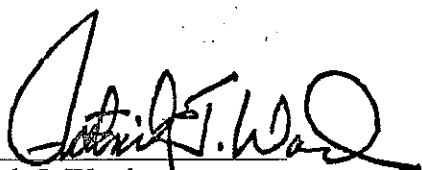
Unanimous Decision of
The Board of Appeals

Filing Date: 3/14/18



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals