



Town of Brookline Massachusetts

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Benjamin Kaufman, Clerk

BOARD OF APPEALS
Jesse Geller, Chairman
Mark G. Zuroff
Johanna Schneider

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2021-0043

SHANTI SERDY AND DEON WOLPOWITZ
39 THORNDIKE STREET, BROOKLINE, MA

Petitioners, Shanti Serdy and Deon Wolpowitz, applied to the Building Commissioner for permission to remove existing shed and install 2 AC condensers with a screening fence in a T-5 Two-Family & Attached Single-Family Zoning District. 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 August 19, 2021, at 7:00 p.m. virtually 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 August 5, 2021 and August 12, 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 public hearing on the following petition:

Address: 39 Thorndike Street
Petitioner: Shanti Serdy & Deon Wolpowitz
Zoning District: T-5 (Two-Family & Attached Single-Family)
Precinct: 9
Description: Remove existing shed, and install 2 AC condensers with a screening fence

Date, time, and location of the public hearing are as follows:

Date: 08/19/2021
Time: 7:00 pm
Location: Virtual Meeting (see below)

Register for this virtual hearing:

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

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>

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

QUESTIONS, PUBLIC COMMENT FILES, PDFs OR PRESENTATIONS:

Advanced 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 Karen Chavez (kchavez@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 by mail or in the papers. Questions about hearing schedules may be directed to the Planning and Community Development Department at vpanak@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 G. Zuroff
Johanna Schneider*

Publish: 08/05/2021 & 08/12/2021

At the time and place specified in the notice, the Town of Brookline Zoning Board of Appeals held a virtual public hearing. Present at the hearing were Chair Mark G. Zuroff and Board Members Johanna Schneider and Lark Palermo. Also present at the hearing was Deputy Building Commissioner, Paul Campbell and Zoning Coordinator and Planner, Karen Chavez.

The Petitioner, Deon Wolpowitz, waived a reading of the public hearing notice for the record.

Mr. Wolpowitz stated that the proposal is to place AC condensers along the rear of the property. Mr. Wolpowitz explained that the Planning Board recommended that the AC condensers be proposed in a different location to minimize any noise nuisances for the neighbors, and that he was amenable to the revised location. Additionally, Mr. Wolpowitz is proposing a fence around the AC condensers to provide additional protection for the neighbors. He further stated that he proposes to remove asphalt and provide a landscape plan to satisfy the counterbalancing amenity requirement.

Chair Zuroff inquired for clarification on what relief is being requested. Deputy Building Commissioner, Paul Campbell stated that the Petitioner is only requesting relief from the side yard setback, however the Petitioner's site plan did not include the distance between the AC condensers and the rear lot line confirming that the proposal complies with the required rear yard setback.

Chair Zuroff called for public comments in favor of the application. Steven Bloomenthal, an abutter to the subject property, asked to view the site plan on the screen, and agreed with the revised location of the AC condensers.

Chair Zuroff called for public comments in opposition to the application. No comments were submitted.

Chair Zuroff called upon Karen Chavez, Planner and Zoning Coordinator, to deliver the findings of the Planning Department and Board:

FINDINGS

ZONING: T-5	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Use	1-family detached dwelling	Single-family	Single-family	
Lot Size	4,000sf	5,175sf	5,175sf	
Floor Area Ratio	1.0 (100%) 5,175sf	0.91 (91%) 4,715sf	0.91 (91%) 4,715sf	
Height	35'	Unclear	Unchanged	
Front Setback	15'	15'	15'	
Side Yard Setback (Left / Right)	7.5'/7.5'	6.2'/21.9'	6.2'/21.9'	Pre-Existing Nonconforming (unaffected)
Rear Yard Setback	30'	17.9'	17.9'	Pre-Existing Nonconforming (unaffected)
Open Space (Landscaped / Usable)	10%/30% 471sf / 1,415sf	Unknown	Unchanged	

Other Zoning Relief Needed

Section 5.63, Accessory Buildings or Structures in Side Yards: This section allows accessory structures that are at least 75 feet from a front property line to be located up to one-half the required setback from a side property line or 6 feet (whichever is greater). In this case, 6 feet is required and the AC condensers are proposed at 1 ft. Relief from this requirement can be granted through Section 5.43.

Section 5.43, Exceptions to Yard and Setback Regulations: Relief from setback requirements can be granted through Section 5.43 which states that relief may be granted if the applicant can provide an adequate counterbalancing amenity that mitigates negative impacts arising from the requested deviation from the requirements of the Zoning Bylaw.

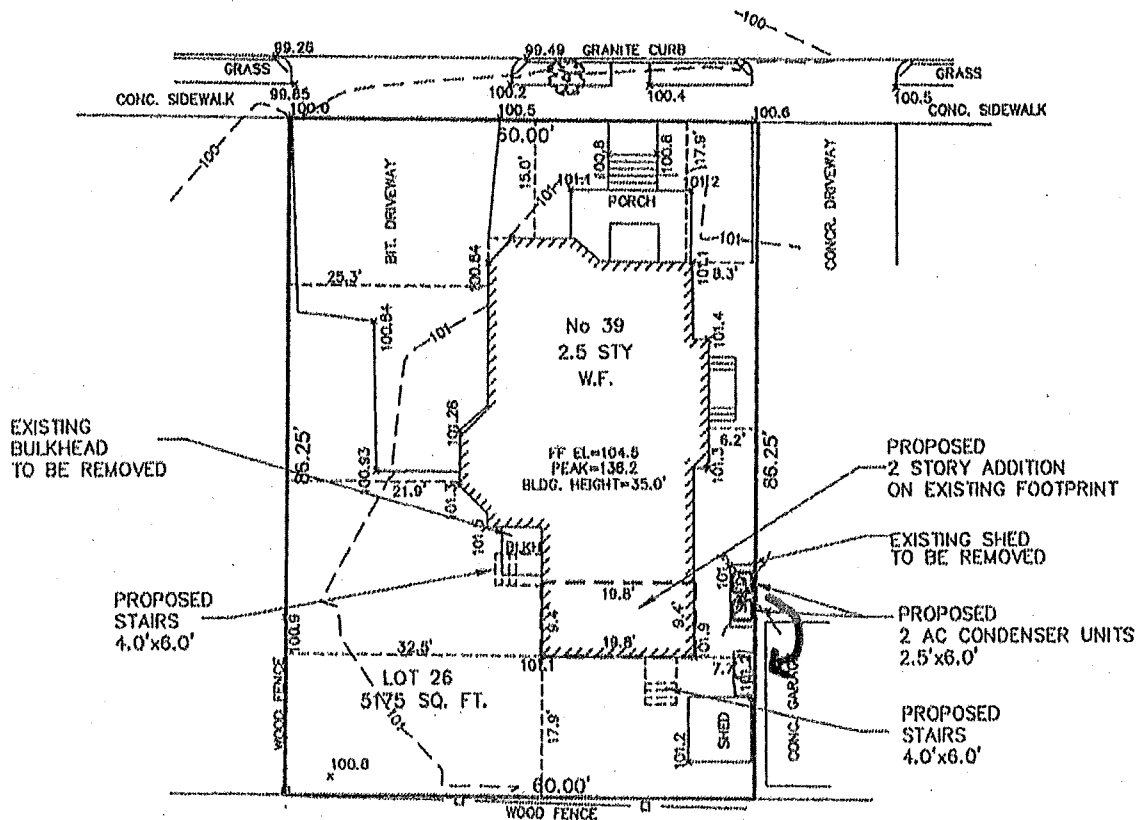
PLANNING DEPARTMENT COMMENTS

Ms. Chavez stated that the Planning Department is not supportive of this proposal. There are a number of seemingly viable locations for the condensers on the right side of the property where zoning relief would not be needed. If the applicant can provide a legitimate justification for the need to locate the condensers along the left property line, Staff would be supportive and request that the applicant install fencing as proposed to serve as a counterbalancing amenity.

PLANNING BOARD RECOMMENDATION

Ms. Chavez stated that while the Planning Board is generally supportive of locating AC condensers along the left-side property line, the Board prefers that they be located further toward the rear of the property. The applicant and the Board agreed on a location such that the existing concrete garage on the neighbor's property provides a shield between the condensers and the neighbor's building. The new location may need additional zoning relief (for rear yard setback) and the Planning Board would support the granting of any necessary relief to accommodate the

revision to the site plan. The neighbor is seemingly also amenable to this solution. A sketch of the revised location is provided below:



Ms. Chavez stated that the Planning Board recommends approval of the site plan by AGH Engineering, dated 8/11/21 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit a revised site plan, stamped and signed by a registered engineer or land surveyor, showing a revised location for the proposed AC condensers to the Assistant Director for Regulatory Planning for review and approval.
2. 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.
3. 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.

Chair Zuroff called upon Deputy Building Commissioner, Paul Campbell to deliver the opinion of the Building Department. Mr. Campbell stated that prior to the issuance of a building permit, the Building Department will require the applicant to submit the proposed fence height to confirm it complies with the Zoning By-Law. Additionally, the proposal will need to comply with the Noise By-Law, from the Town of Brookline's General By-Law. Mr. Campbell further stated that the Building Department has no objection to the relief requested and will work with the Petitioner to ensure compliance with the Board's decision and all state building codes.

The Board then deliberated on the merits of the application. Chair Zuroff clarified that the applicant will need to submit a landscape plan and a plot plan that identifies the proposed AC condensers' rear yard setback to the Building Department for approval prior to the issuance of a Building Permit, and would be in favor of granting the relief. Board Member Schneider agreed and noted that the special permit criteria are met with respect to the placement of an accessory structure within the side yard setback. Board Member Schneider further added that compliance with the required rear yard setback should be confirmed through submission of a plot plan prepared by a registered surveyor, and would be in favor of granting the relief. Board Member Palermo agreed with Board Member Schneider and Chair Zuroff, and would be in favor of granting relief subject to the revised conditions.

The Board then determined, by unanimous vote, that the requirements for a special permit for Section 5.63 and pursuant to Section 5.43 and 9.05 of the Zoning By-Law have been met.

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

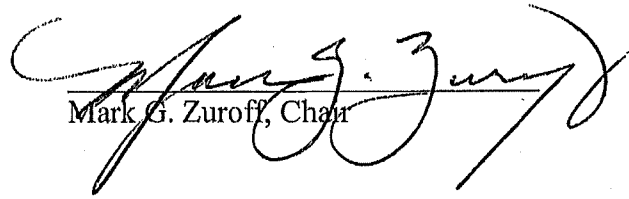
- a. The specific site is an appropriate location for such a use, structure, or condition.

- 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.
- 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 zoning relief, subject to the following revised conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit a revised site plan, stamped and signed by a registered engineer or land surveyor, showing a revised location for the proposed AC condensers identifying compliance with the required rear yard setback, to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a landscape plan that shows proposed counterbalancing amenities subject to the review of and approval by the Assistant Director for Regulatory Planning. The counterbalancing amenities must be executed in accordance with the approved plan.
3. 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 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



Mark G. Zuroff, Chair

Filing Date: SEP 07 2021

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals