



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chair
Johanna Schneider
Lark Jurev Palermo

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899

JUN 15 2 28 PM '23
TOWN OFFICE

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2023-000020
106 WESTBOURNE TERRACE

Petitioners Keith W. Whited & Linda K. Cutting applied to the Building Commissioner for permission to demolish the existing garage and to add two chillers within the side yard setback. The application was denied and an appeal was taken to this Board.

The Board of Appeals administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed May 11, 2023, 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 April 27, 2023, and May 4, 2023, in the *Boston Herald*, a newspaper of general circulation in Brookline. A copy of said notice is as follows:

TOWN OF BROOKLINE - Zoning Board of Appeals
NOTICE OF HEARING

The Brookline Zoning Board of Appeals will hold a public hearing
on

Date/Time: Thursday, May 11, 2023

Location: Virtual Hearing

Virtual Registration Link: <https://bit.ly/3naMj5Q>

Petitioner: Keith W. Whited & Linda K. Cutting

Address: 106 Westbourne Terrace

Subject: Adding two chillers within the side setback

Nature of Action/Relief:

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.63 - ACCESSORY BUILDINGS OR STRUCTURES IN SIDE YARDS

Plans and submissions may be viewed online at

<https://www.brooklinema.gov/DocumentCenter/Index/4122>

Interested persons may provide comments at the public hearing or by submitting written comments by email to

manthony@brooklinema.gov.

Assistive Listening Devices are available upon request:

<https://www.brooklinema.gov/560/Americans-With-Disabilities-Act-ADA>

Publish: 4/27/2023 & 5/4/2023

On May 11, 2023, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chair Lark Palermo and Board Members Neil Wishinsky and Paul Bell. The case was presented by the project's architect, David King, David L. King Architects Inc., 36 Bromfield Street, Boston, MA 02108. Also in attendance were the Petitioners, Keith W. Whited & Linda K. Cutting.

Zoning Board of Appeals Chair Palermo called the hearing to order at 7:00 pm. Chair Palermo reviewed the standard hearing procedure for virtual hearings and confirmed that all Board Members and staff could visually and auditorily engage in the hearing. Mr. King waived a reading of the published notice.

Mr. King presented the case for the Petitioners. He stated that the application is for a two-unit condominium property. The Petitioners own the top unit and are purchasing the ground floor unit from its current owner, Scott Armstrong. Upon the sale, the Petitioners will own all the condominium units in the building. In reliance on a digital presentation, Mr. King displayed the

proposed site plans, pointing out the proposed location for the AC condensers, explaining that although this location is in the required side yard setback, it is preferable to installing them in the rear yard where they would interfere with the use of the first floor porch.

Mr. King stated that the Planning Board asked the applicants to place screening in front of the condensers as a counter-balancing amenity, since the condensers are adjacent to the next door neighbor’s driveway.

Board Member Bell inquired if the appropriate legal applicant was the one who applied for the zoning relief. Zoning Coordinator/Planner Madison Anthony responded affirmatively. Board Member Bell then asked for clarification on why the Planning Board report states “N/A” for the existing condition of the setback from the chillers. Ms. Anthony responded that the house itself is located in the side yard setback and thus creates a pre-existing non-conformity. She explained that the Planning Board report refers to the setback from chillers, which are not currently located there and cannot, therefore, be measured.

Chair Palermo asked if anyone from the public wished to comment on the proposal. No one indicated they wished to do so.

Chair Palermo then called upon Planner and Zoning Coordinator, Madison Anthony, to Present the Planning Board report.

FINDINGS

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.63 - ACCESSORY BUILDINGS OR STRUCTURES IN SIDE YARDS

ZONING: T-5	Requirements	Existing Conditions	Proposed Conditions	Relief Required
Side Yard Setback (condensers)	10	N/A	1.5'	<u>Special Permit</u> ^{1,2}

¹ Under Sec. 5.63, no part of any accessory structure situated within 75 feet of the street line, or within a distance equal to three-fourths of the lot depth if that be less, shall extend within any

required side yard. *The proposed condensers will be within 75 of the street lot line and placed within the required 10 feet side yard.*

² **Section 5.43, Exceptions to Yard and Setback Regulations:** Relief from setback requirements can be granted through Section 5.43 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. *Proper screening of the condensers may be considered an appropriate counterbalancing amenity in this case.*

PLANNING DEPARTMENT STAFF COMMENTS

The Planning Department Staff considers this proposal fairly modest. No changes are being proposed to the building envelope, and the equipment size should have little to no impact on the neighborhood. Since the equipment will be very close to the right abutter, Staff recommends that the equipment is appropriately screened both from the street and the immediate abutter, either with landscape or fencing, to mitigate noise and visibility.

PLANNING BOARD COMMENTS

The Planning Board has no objections to the proposal as long as it complies with noise limits and is appropriately screened from the street. The Board recommended the applicant get a non-opposition letter from the immediate abutter to the right and provide proper screening between the properties if the neighbor deems it necessary.

If the Planning Board recommends approval of the site plans by PRECISION LAND SURVEYING INC, PLS, dated October 20, 2022, the Planning Department Staff recommends the following conditions:

- 1. Prior to the issuance of a building permit, the applicant shall electronically submit final site plans, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning or designee for review and approval.**
- 2. Prior to the issuance of a building permit, the applicant shall electronically submit a plan showing counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning or designee. The counterbalancing amenities must be executed in accordance with the approved plan. Proper screening from the street with either a fence or landscape will be considered a counterbalancing amenity.**
- 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.**

Chair Palermo then called upon Ms. Anthony to deliver the findings of the Building Department. Ms. Anthony stated that the Building Department had no objection to the requested relief and added that should the Board grant the requested relief, the Building Department would

work with the Petitioners to ensure conformance with the Board's decision and all applicable building codes.

In deliberation, Board Member Bell stated that he is in favor of granting the relief, which he believes is fairly minor because it is an extension of a pre-existing nonconformity

Board Member Wishinsky agreed. He noted that this is not the first case where fairly minor zoning relief is required to locate an AC condenser near a home and he would like to see the Town work on a simpler way for applicants to get approval for projects like this in the future.

Chair Palermo stated she is in favor of granting the relief.

The Board then determined, by unanimous vote, to grant the requested Special Permits and that the petitioner has satisfied the requirements necessary for relief under **Sections 5.43** and **5.63** of the Zoning By-Law. In addition, the Board made the following specific findings under said **Section 9.05** based on the evidence submitted at the hearing and the Board's deliberation:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will no 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 not have any effect on the supply of housing available for low- and moderate-income people.

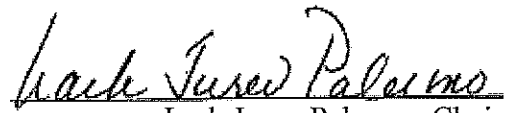
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall electronically submit final site plans, stamped and signed by a registered engineer or land surveyor, to the Assistant Director for Regulatory Planning or designee for review and approval.
2. Prior to the issuance of a building permit, the applicant shall electronically submit a plan

showing counterbalancing amenities subject to approval by the Assistant Director for Regulatory Planning or designee. The counterbalancing amenities must be executed in accordance with the approved plan. Proper screening from the street with either a fence or landscape will be considered a counterbalancing amenity.

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


Lark Jurev Palermo, Chair
Zoning Board of Appeals

Filing Date: 5/15/23

A True Copy
ATTEST:



Benjamin Kaufman
Clerk, Board of Appeals