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Town of Brookline
BUILDING DEPT.
TOWN OF BROOKLINE Massachusetts

BOARD OF APPEALS
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 2012-0002

Petitioner, Kay George, applied to the Building Commissioner for permission to legalize the installation of a split system heat pump in the side yard of 693 Hammond Street. The application was denied and an appeal was taken to this Board.

On January 5, 2012 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 February 16, 2012 at 7:15 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 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 January 26, 2012 and February 2, 2012 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:

Petitioner: **George, Kay**

Owner: **George, Kay**

Location of Premises: **693 Hammond Street**

Date of Hearing: **Feb 16, 2012**

Time of Hearing: **7:15 p.m.**

Place of Hearing: **Selectmen's Hearing Room, 6th Floor**

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

- 1. 5.43; Exceptions to Yard and Setback Regulations, special permit required.**
- 2. 5.60; Side Yard Requirements, variance required.**
- 3. 5.63; Accessory Buildings or Structures in Side Yards, variance require**

of the Zoning By-Law to construct a parking area to install an outdoor split system heat pump in the side yard of your property at 693 HAMMOND ST.

Said premise located in a **T-6 (Two-family and attached single-family) Residential 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.

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Board Members, Jonathan Book, Lisa Serafin, and Mark Zuroff. The case was presented by

the attorney for the petitioner, Robert L. Allen Jr., 300 Washington Street, Brookline MA 02445. Also in attendance was the petitioner Kay George.

Mr. Allen described the property located at 693 Hammond Street, Brookline, Massachusetts. The applicant, Kay George, wishes to legalize the installation of a split system heat pump in the side yard of 693 Hammond Street. The heat pump is completely screened inside a fenced-in area. 693 Hammond Street is the northernmost townhouse of four townhouses located on a rear lot near the intersection of Hammond Street and Pine Road. The Holyhood Cemetery is located immediately to the rear of the property. There is a parking lot in front serving the four dwellings.

Mr. Allen explained that this issue first arose when the original heat pump, located in the rear yard immediately behind the unit, broke down. The heat pump was an older Freon-gas unit which was not very energy efficient. In order to replace the unit, a contractor would have to replace all the pipes servicing it, which were located along the ceiling through the entire length of the house. Ms. George's contractor suggested using a more energy efficient gas pump and running new pipes through the kitchen ceiling and then down the wall and underground to the location behind the fence. It was cleaner and significantly less expensive and the contractor was hired to handle all construction and permitting. The contractor was retained to handle all construction, but failed to obtain a permit.

Mr. Allen then described some of the zoning relief requested, stating that the applicant is seeking, pursuant to Sect 5.43 of the By-Law to waive 5' 3" of the side yard setback to allow this pump. The location of the pump is behind an existing fence with landscaping surrounding it. Mr. Allen submitted photos showing that it is nearly impossible to see the unit in its current location, and there have been no complaints to date about sound emanation. Mr. Allen provided the Board with letters of support from the immediate abutters most affected by the location of this heat pump. He explained that even the individual who wrote in opposition told the Planning Board that he just wants the location

approved and if the Town is comfortable with the proposal then he is comfortable with the proposal. The Planning Board unanimously approved the plan and was supportive of the proposed counterbalancing amenity of an enhanced landscape plan.

Chairman Book asked whether the heat pump was located in the common area of the condominium. Mr. Allen stated that it was and that, if granted the relief, the petitioner will be required to work out an arrangement with the condo association. Board Member Zuroff asked whether other unit owners will have the same problem. Mr. Allen stated that he was uncertain as to the heating pumps and future needs of other unit owners.

Chairman Book asked whether anyone in attendance wished to speak in favor of or against the proposal. No one rose to speak for or against the proposal.

Courtney Synowiec, Planner, delivered the findings of the Planning Board.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.60 – Side Yard Setback

Section 5.63 – Accessory Buildings or Structures in Side Yards

Dimensional Requirements	Required	Proposed	Relief
Side Yard Setback – Accessory Structure	6 feet	9 inches	Special Permit / Variance*

*Under Section 5.43, the Board of Appeals may waive yard and setback requirements if counterbalancing amenities are provided.

Board of Appeals Case #2557 – Modification required

Ms. Synowiec reported that the Planning Board is supportive of the proposed legalization for the heat pump to serve 693 Hammond Street. The equipment is well screened by a wood fence and attractive landscaping surrounds it.

Therefore, the Planning Board approves the plans by Jonathan Raisz, dated 1/14/2012, subject to the following conditions:

1. Prior to the issuance of a mechanical permit from the Building Department, a final landscaping plan shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.

2. Prior to the issuance of the required permit from the Building Department, 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 architect; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Book then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard stated that the petitioner will require a mechanical permit, and that the Building Department will take care of necessary permitting. Mr. Shepard reported that the Building Department was supportive of the requested relief.

The Board, having heard all the testimony, had no further issues to discuss.

The Board then determined, by unanimous vote that the requirements of **Sections 5.43 and 9.05** of the bylaw had been met to warrant the grant special permits with respect to the requirements of **Section 5.60**, and **Section 5.63** of the bylaw. The Board made the following specific findings pursuant to 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. The development as proposed will not have a significant adverse effect on the supply on 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 mechanical permit from the Building Department, a final landscaping plan shall be submitted subject to the review and approval of the Assistant Director of Regulatory Planning.**
2. **Prior to the issuance of the required permit from the Building Department, 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 architect; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Board voted to modify Board of Appeals Decision #2557 (1982) to the extent necessary to be consistent with the relief granted by this decision.

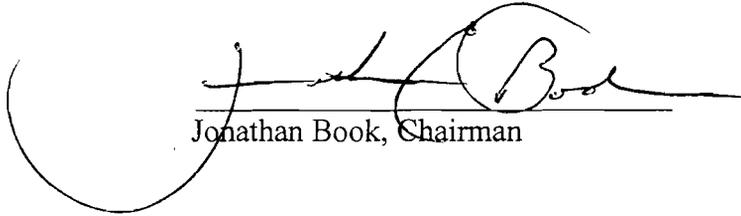
Unanimous Decision of
The Board of Appeals

Date: 6 April 6, 2012

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals


Jonathan Book, Chairman

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TOWN CLERK
APR 17 2012