



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Christopher Hussey

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Town of Brookline
BUILDING DEPT. *Massachusetts*
TOWN OF BROOKLINE

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 2012-0014

Petitioner, Sintetos, Christopher/Cabot Tree Realty Trust, applied to the Building Commissioner to install a backup generator within the front yard setback on the Cabot Street side of the lot. The application was denied and an appeal was taken to this Board.

On March 16, 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 April 5, 2012 at 7:00 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 March 15, 2012 and March 22, 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: SINTETOS, CHRISTOPHER/CABOT TREE REALTY TRUST
Owner : SINTETOS, CHRISTOPHER/CABOT TREE REALTY TRUST
Location of Premises: 130 CABOT ST
Date of Hearing: April 05, 2012
Time of Hearing: 07:00 PM
Place of Hearing: Selectmen's Hearing Room, 6th. floor

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

5.43; Exceptions to Yard and Setback Requirements, special permit required.

5.50; Front Yard Requirements, variance required.

5.53; Accessory Buildings In Front Yards, variance required.

Of the Zoning By-Law to INSTALL BACK-UP GENERATOR IN FRONT YARD REQUIRING BOA RELIEF.

at 130 CABOT ST

Said Premise located in a S-25 (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 617-730-2134 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 were Board Members, Jonathan Book, Christopher Hussey, and Enid Starr. The case was presented by the attorney for the petitioner, Robert L. Allen Jr., 300 Washington Street, Brookline MA 02445.

Mr. Allen described the property located at 130 Cabot Street as a single family home that was constructed in 2000. The home is located at the intersection of Cabot Street and Singletree Road. The property is bordered by a low iron fence and is extensively landscaped so the area interior of the fence is well screened from the street. The surrounding properties are either single family homes or undeveloped lots.

Mr. Allen explained that the applicant, Cabot Tree Realty Trust, seeks to install a backup generator within the front yard setback on the Cabot Street side of the lot. The new generator will be set back approximately 15' from the front lot line and will be installed behind the existing fence, where the fence jogs in to avoid a manhole cover, and landscaping. The generator should have extremely limited visibility from the street. The applicant intends to install a new fence and several new yews to cover the generator from street view.

Regarding the generator, Mr. Allen showed a photograph of the generator and explained that it is a Generac Model #5887, which is an Air-Cooled Liquid Propane Natural Gas powered standby generator without transfer switch. It performs operation very quietly which means that users can comfortably carry on with their routine work without disturbing their neighbors. The dimensions of the generator are 48 inches in length, 25 inches wide, and 29 inches tall. When operating in normal mode, the generator has a dB rating of 66 at a 23 foot distance. The Town allows a maximum of 80 dB for a generator. The proposed generator is well below the Town maximum. Mr. Allen informed the Board that any testing of the generator would be done during the day.

Mr. Allen then described some of the zoning relief requested, stating that the applicant would need relief under Section 5.50 regarding Front Yard Setback. Under the bylaw, a setback of thirty feet is required. The proposal sets forth a fifteen foot setback and, therefore, a special permit is required. Mr. Allen reminded the Board that under Section 5.43 the Board may by special permit waive yard and setback requirements if counterbalancing amenities are provided. Mr. Allen reiterated that counterbalancing amenities would include additional landscaping to screen the generator and installation of a new fence or retaining wall to match existing fence. Mr. Allen stated that the applicant met the requirements for a special permit under Section 9.05. The specific site is an appropriate location for such use. The generator would connect to an existing gas pipe on the property and would limit the amount of further construction on the property. The use will not adversely affect the neighborhood. The Generac 5887 is an efficient generator with an active decibel level of 60db, which should not be noticeable to neighbors or pedestrians in the immediate area. The counterbalancing amenities will shield the generator from view and provide more trees and greenery to the neighborhood. For the same reasons, there will be no nuisance or serious hazard to vehicles or pedestrians. Adequate and appropriate facilities will be provided for the proper operation and proposed use. The proposed generator is a top of the line generator, energy efficient, quiet and small.

Board member Hussey suggested a more appropriate plan for sound proofing the generator, stating that fencing may be more appropriate than landscaping.

Chairman Starr 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 5.50 – Front Yard Setback

Section 5.53 – Accessory Buildings in Front Yards

Dimensional Requirements	Required	Existing	Proposed	Relief
Front Yard Setback	30'	n/a	15'	Special Permit*

*Under **Section 5.43**, the Board of Appeals may by special permit waive yard and setback requirements if counterbalancing amenities are provided. The applicant is proposing to provide additional landscaping to screen the generator as a counterbalancing amenity.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming structure or use.

Ms. Synowiec stated that the Planning Board is generally supportive of this proposal. Although there are a number of other locations on the property where the generator could be installed outside the setback, including the location to the rear of the home where six air conditioning condensers are located, the proposed location in the front yard should not be visible from the street and should be sufficiently far from neighboring properties to prevent any negative impacts created by the noise of the generator.

Therefore, the Planning Board approves the plans by CBA Landscape Architects, dated 1/6/12, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities 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 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.

Chairman Starr then called upon Michael Yanovitch, Assistant Building Commissioner, to deliver the comments of the Building Department. Mr. Yanovitch reported that the Building Department’s main concern was the sound, which was addressed by Attorney Allen, thus he was supportive of the requested relief.

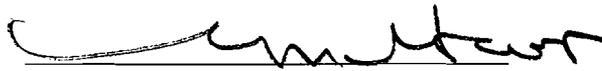
The Board, having heard all the testimony, had no further issues to discuss. The Board then determined, by unanimous vote that the requirements of **Sections 5.50, 5.53, and 8.02.2** of the bylaw had been met to warrant the grant of the special permits. The Board made the following specific findings 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 building permit, the applicant shall submit a final landscape plan indicating all counterbalancing amenities and including appropriate sound proofing 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 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.

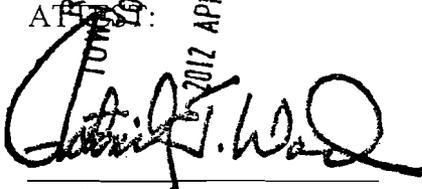
Unanimous Decision of
The Board of Appeals



Enid Starr, Chairman

Filed Date: April 13, 2012

A copy
of the
decision



Patrick J. Ward
Clerk, Board of Appeals

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