



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

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TOWN OF BROOKLINE
Town of Brookline
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2012-0016

Petitioners, Peter and Karlyn Grimes, applied to the Building Commissioner for permission to construct a trellis in the rear yard of their home at 58 Brook Street. The application was denied and an appeal was taken to this Board.

On February 23, 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 October 11, 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 August 20 and August 27, 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: **GRIMES PETER W& KARLYN L**
Owner: **GRIMES PETER W& KARLYN L**

Location of Premises: **58 BROOK ST**
Date of Hearing: **October 11, 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 to:

- 5.43; Exceptions to Yard and Setback Regulations, special permit required.**
- 5.63; Accessory Structures in Side Yards, variance required.**
- 5.72; Accessory Structures in Rear Yard, variance required.**
- 8.02.2; Alteration and Extension, special permit required.**

Of the Zoning By-Law to Construct a trellis in the rear yard at your home.
At **58 BROOK ST**
Said premise located in a **T-5 (Apartment house) 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 Chairman, Jesse Geller, and Board Members, Mark Zuroff and Lisa Serrafin. The case was presented by the petitioner Peter Grimes

Mr. Grimes described the property as a single family home that was recently converted from a two-family by the current homeowner. The home is a two and a half story single family shingle style home with a small garage in the rear yard and a driveway on the eastern edge of the property. The driveway to

the neighboring structure at 64 Brook Street borders the western edge of the subject property. 58 Brook Street is located near Linden Square and the John E. Murphy playground, and the surrounding uses are primarily residential.

Mr. Grimes said he is seeking relief for a pergola that was built without a permit and too close to the rear and side lot lines. He said he knows a portion of the pergola overhangs the property line and he is willing to modify that portion. Mr. Grimes said he would like to otherwise leave the pergola as is and would accordingly like to seek relief for the pergola as it has been constructed (but with the encroachment removed). He said the original plan was to modify the pergola based on discussions at the Planning Board meetings, however, after receiving cost estimates from his contractor for the required work he felt it was too expensive. Mr. Grimes said he felt if he moved the pergola a few feet it would not make a big difference from where it currently sits.

Board Member Serrafin asked if the proposed drawings in the Planning Board's report which the Zoning Board was reviewing accurately reflects what the petitioner is now proposing. Lara Curtis Hayes, Senior Planner, confirmed that the petitioners are proposing not to follow the Planning Board's recommendations and are requesting to leave the pergola as constructed and as shown on the original plans.

Chairman Geller asked if anyone present wished to speak in favor of the petitioner's proposal. Dan Lyons of 40 Brook Street rose to speak. Mr. Lyons said he was also the realtor that sold Mr. Grimes this house. He said the pergola is a big improvement over how the rear yard previously appeared. Chairman Geller asked if anyone wished to speak in opposition. No one rose to speak.

The Chairman called upon Lara Curtis Hayes, Senior Planner, to deliver the comments of the Planning Board:

Ms. Hayes said it is difficult for her to deliver the recommendations of the Planning Board due to the fact that the petitioners are proposing something different than what was presented to the Planning Board. She said the proposal went through several Planning Board meetings and modifications. She said the Planning Board was generally supportive of modifying the pergola to satisfy the abutters' concerns. Ms. Hayes said if the pergola were to be modified as presented to the Planning Board, the Planning Board's findings would be as follows:

FINDINGS

Section 5.60 – Side Yard Setback

Section 5.70 – Rear Yard Setback

Dimensional Requirements	Required	Existing	Proposed	Relief
Side Yard Setback	6'	n/a	Est. 2'	Special Permit*
Rear Yard Setback	6'	n/a	Est. 2'	Special Permit*

* Under *Section 5.43*, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicant is proposing climbing vines on the pergola to help soften its appearance and increase the privacy of the users of the patio as well as the rear abutters 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. Hayes said the Planning Board is supportive of the legalization of the pergola. The applicant has addressed the concerns of the rear abutters with respect to the encroachment of the pergola by reducing its size and increasing the rear yard setback by 2'. Additionally, as the overall mass of the structure is

going to be reduced and will eventually have a vegetated roof, the Planning Board feels the pergola will have a minimal impact on the neighborhood, will increase privacy for the applicants as well as the abutters, and will contribute to the usability and enjoyment of the existing rear patio, which will be covered by the pergola.

Therefore, the Planning Board approves the site plan by Christopher Charlton, dated 7/23/2011, subject to the following conditions:

1. Prior to the issuance of a building permit to legalize the pergola, the applicant shall submit a final site plan indicating the location of the pergola posts and the outer edge of the pergola slats [set back at least 2' from the rear and side lot lines] as well as all setback dimensions subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit to legalize the pergola, 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.
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 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.

The Chairman then called upon Michael Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. He said the Building Department does not condone violations of the Town's permitting requirements but appreciates the petitioners' efforts to correct their error.

generally in the habit of rewarding forgiveness over permission. He said he does not believe the pergola makes a significant negative impact on the abutter, aside from where it overhangs the lot line. Mr. Yanovitch said the Building Department does not oppose the requested relief but cannot support it due to the fact the petitioner is requesting relief for something that was not previously proposed to the Planning Board.

Chairman Geller asked Mr. Grimes if he was willing to modify the pergola to match the previous proposal and the recommendations of the Planning Board. Mr. Grimes, said he was requesting relief for the pergola as constructed (but subject to removal of those portions over the property line) and would not agree to otherwise modify the pergola.

The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that the use of the pergola as constructed would adversely affect the abutting neighbors given its proximity to the abutting neighboring properties and denied the petitioners' requested relief.

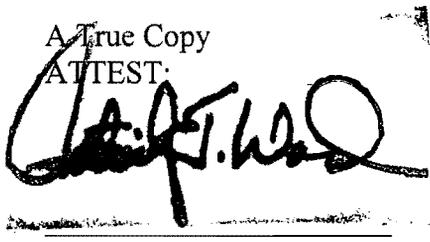
Unanimous Decision of
The Board of Appeals

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Jesse Geller, Chairman

Filing Date: November 14, 2012

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals