

**Brookline Board of Appeals
February 18, 2016, 7:00 PM
Public Hearing**

**333 Washington Street
6th Floor Selectmen's Hearing Room**

Board Members Present: Mark Zuroff (Chairman), Kate Poverman, Avi Liss

Staff Present: Michael Yanovitch (Building Dept.), Jay Rosa (Planning Department)

68 Amory Street

Proposal: Construct a detached single-car garage within the required side and rear yards

Zoning District: SC-7 (Single-Family & Converted for Two-Family)

Precinct: 1

Board Decision: Relief request **granted**, subject to conditions

30 Lyman Road

Proposal: Construct a new single-family dwelling

Zoning District: S-25 (Single-Family)

Precinct: 14

Board Decision: Relief request **granted**, subject to conditions

171 High Street

Proposal: Construct a two-story rear addition

Zoning District: M-1.0 (Apartment House)

Precinct: 5

Board Decision: Case continuance to **February 23, 2016**

Minutes shall be posted on the Town of Brookline website (<http://www.brooklinema.gov/564/Zoning-Board-of-Appeals>) upon approval. Draft minutes shall be made available upon request.

Decisions shall be posted on the Town of Brookline website (www.brooklinema.gov). Appeals, if any, shall be filed with land court or superior court within twenty days after the date of filing of such notice in the office of the town clerk.

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Board Members Present – Mark Zuroff (Chairman), Avi Liss, Kate Poverman
Staff Present – Michael Yanovitch (Build. Dept.), Jay Rosa (Planning Dept.)

68 Amory Street – Construct an accessory single-car garage in the side and rear yards.

Board Chairman Mark Zuroff opened the hearing and called case #2015-0070. Mr. Zuroff reviewed standard hearing procedure.

The Petitioner's Attorney, Robert Allen of the Law Office of Robert Allen (300 Washington Street, Brookline, MA) waived the reading of public hearing notice for the record and introduced property owners Daniel Jurayj and Katherin Silbaugh, and project architect Evan Kunz

Attorney Allen stated that the property owners purchased the subject property in 1994 and are proposing to construct a detached single-car garage to be located in both the required side and rear yards. 68 Amory Street is located within the Cottage Farm Local Historic District therefore the proposal before the Board was reviewed and approved by the Preservation Commission in September of 2015. Attorney Allen stated that the detached nature of the garage and the siting on the lot is a direct result of the recommendations of the Preservation Commission, with the intent to maintain a consistent streetscape and incorporate historic building materials.

Project architect Evan Kunz, of Kunz Architects (38 Greenwich Park, Boston, MA) reviewed project plans with the Board. Mr. Kunz described garage details that match the existing craftsman style primary structure including brackets, wood, stucco, and colors. The garage remains below 15 feet in height and walls will be 2 feet from the side and rear lot lines in question. Mr. Kunz stated that the 320 square foot garage is large enough to store one vehicle with additional general storage space. Mr. Kunz further stated that the rear neighbor at 67 Powell Street constructed a similar detached garage immediately to the rear of this proposed garage location. For this reason, Mr. Kunz believed that the new garage will have minimal impact on the neighborhood, including this immediate abutter.

Board Chairman Zuroff questioned the reasoning behind the proposed garage height of 14'-11 ½". Mr. Kunz stated that the garage style and gable are intended to match the primary structure. Mr. Kunz also believed that the additional height may allow for future storage above parked vehicles.

Mr. Zuroff requested that the Petitioner discuss setback relief in greater detail. Mr. Zuroff was particularly concerned that the narrow two foot setback between garage walls and an existing solid fence/wall surrounding abutting properties would result in maintenance challenges. Attorney Allen stated that the Preservation Commission again requested a garage location that maintains clear spacing between the primary structure and the accessory garage. The Petitioner specifically desired a setback greater than 0 feet in order to allow for proper maintenance and landscaping. Attorney Allen stated that the Petitioner intends to install climbing vines on the rear and side walls of the proposed garage.

Board Member Avi Liss questioned if the existing curb cut on Amory Street will be maintained and utilized to access this new garage. Mr. Kunz confirmed that the existing curb cut will be unchanged and the Petitioner currently uses the driveway for uncovered parking.

Board Member Kate Poverman questioned why the property owner is motivated to install a new garage. Property Owner Daniel Jurayj stated that he has completed phased improvements since purchasing the property, and the garage construction has been his goal for several years. Mr. Jurayj also stated that he recently purchased a vintage vehicle that he may store in the proposed garage.

Attorney Allen reiterated that the proposed garage requires special permit relief from side and rear yard setbacks for an accessory structure. This relief can be granted under Zoning By-Law Section 5.43 if counterbalancing amenity is provided. Attorney Allen acknowledged that the 2 foot setback does result in a "tight area" but it is accessible for activities like landscaping and maintenance. Attorney Allen reiterated the fact that the two foot setback represents an effort by the Petitioner to incorporate the goals of the Preservation Commission and the Zoning By-Law.

Attorney Allen further stated that the proposal meets the general requirements for the grant of a special permit in accordance with By-Law Section 9.05 because detached garages of this style and location are common in the neighborhood. Attorney Allen believed that the garage itself is modest and will not generate adverse impact on neighboring residents. Attorney Allen also believed that the garage parking will improve vehicular maneuverability by pulling cars away from the Amory Street lot line and sidewalk.

Attorney Allen confirm that the removal of a deteriorating tree and the use of historic materials to construct the garage are proposed to serve as counterbalancing amenity for the setback relief. Attorney Allen indicated that the Petitioner would comply with the submission of a final landscaping plan if conditioned upon approval by the Board.

Chairman Zuroff questioned if the Petitioner has any intention to utilize the garage for residential purposes. Attorney Allen stated that the accessory garage will have no plumbing and is not intended for any residential activity.

Chairman Zuroff called for public comment in favor of, or in opposition to the Petitioner's proposal.

Raj Dhanda of 67 Powell Street stated that he has owned the property located immediately to the rear of 68 Amory Street since 1971. Mr. Dhanda disagreed that the proposed garage and request for setback relief does not meet By-Law requirements for the grant of a special permit under Section 5.43 or 9.05. Mr. Dhanda also stated that he did not receive public notice of a Planning Board hearing on this matter that was held on February 4, 2016. Mr. Dhanda felt that the location of the new garage would further crowd an existing dense area and the proposed 2 foot setbacks generate concern in terms of water runoff related damage to his property. Mr. Dhanda did not believe that the design of the garage is appropriate for the neighborhood because it is asymmetrical and disrupts the visual streetscape. Mr. Dhanda further referenced the non-conforming floor area ratio (FAR) for the subject property as evidence that an additional accessory structure further crowds an already dense property. Mr. Dhanda believed these elements place a burden on him as an abutting resident and suggested that the Board deny the request for relief and/or require the Petitioner to provide more substantive setbacks for the structure. Mr. Dhanda acknowledged that the Petitioner's requested that similar Board consideration be taken into account when he constructed a detached garage in close proximity to this location on his own property.

Attorney Allen stated that the design of this proposed garage was intended to minimize impact on Mr. Dhanda's property. Attorney Allen also added that Powell Street properties are elevated above Amory Street properties so visual and water runoff related impact is not as burdensome as may otherwise be anticipated.

Board Member Pverman questioned how tall the solid wall surrounding 78 Powell Street is. Mr. Dhanda stated that the wall is approximately 6-7 feet in height which complies with Zoning By-Law requirements.

Board Chairman Zuroff questioned the roof configuration is pitched toward the wall located on Mr. Dhanda's property, and if any building permit issued for this project would require water runoff review by the engineering department? Mr. Zuroff also asked if the 2 foot setback calculation is measured from the garage walls of the roof overhang.

Mr. Kunz stated that only a small portion of the roof, as it is currently configured, is pitched toward the rear.

Deputy Building Commissioner Michael Yanovitch stated that the square footage of the accessory structure does not trigger the need for water runoff related review by town engineers. Mr. Yanovitch also stated that all setbacks are calculated from the garage walls and elements like a roof overhang, soffit, or gutters are evaluated as projections that are permitted to extend into required setbacks up to 18 inches.

Mr. Dhanda stated that the primary concern of the 2 foot setback has not been properly addressed.

Board Chairman Zuroff requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board. Mr. Rosa stated that The Planning Board had no objection to the proposed single-car garage. Board members supported the use of stucco, brick, and wood materials because they are consistent with the historic character of the neighborhood. The Board also noted that accessory rear yard structures are common throughout the immediate neighborhood. Therefore, the Planning Board recommends approval of the site plan by VTP Associates, dated 12/11/2015 and revised 1/28/2016, and the plans and elevations by Kunz Associates, dated 1/27/2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations subject to the review and approval of the Preservation Commission staff and the Assistant Director of Regulatory Planning.
2. 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.
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.

Board Chairman Zuroff requested that Mr. Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the Building Department had no objection to the relief as requested and considered the request to be minimal. Mr. Yanovitch reiterated that groundwater and water runoff evaluation standards are not met based on the scope of land disturbance required to construct the garage. Mr. Yanovitch agreed that a rear and side yard setback increase of even 6 to 8 inches could improve any water runoff issues but the accessory structure is also required to maintain a setback from the primary residential structure. This modest relocation away from side and rear lot lines in question would not alter zoning relief required.

Board Deliberation

Chairman Zuroff again stated concern about potential water runoff on to adjacent properties and if the Petitioner has any strategy to mitigate this occurrence.

Board Member Poverman concurred with this concern.

Architect Evan Kunz stated that it is possible to reduce the overhang projection beyond the proposed 2 foot setback and snow guards are often installed to mitigate snow and ice runoff that is often more damaging than rain.

Board Member Avi Liss stated that the garage proposal is well intentioned and purposeful. Mr. Liss believed the setback relief request to be minimal and he favored the grant of special permit relief subject to the condition that snow guards be installed. Mr. Liss also supported both Preservation Commission and Planning Board findings that the proposed structure is appropriate from a design standpoint. Mr. Liss was not satisfied that sight lines from Amory Street and abutting properties will be adversely impacted by this modestly sized garage.

Board Member Poverman stated that she sympathized with concerns raised by abutting residents but she did believe that the requirements for the grant of a special permit under By-Law Section 9.05 are satisfied. Ms. Poverman also commended the Petitioner's use of historically appropriate building materials.

Chairman Zuroff concurred with these Board Member comments and agreed that Section 9.05 standards are appropriately met. Mr. Zuroff stated that the Board prefers when neighboring residents collaborate to reach a design that is satisfactory for all parties however, in this instance, Mr. Zuroff did not believe that the garage may result in adverse impact on abutting properties. Mr. Zuroff also cited compliance with By-Law Section 5.43 requirements for the requested setback relief.

Unanimous Board grant of requested relief, subject to the following revised conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations including a reduced roof overhang projection into the two (2) foot rear and side yard setbacks and snow guard locations, subject to the review and approval of the Preservation Commission staff and the Assistant Director of Regulatory Planning.
2. 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.

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.

30 Lyman Road – Construct a new single-family dwelling

Board Chairman Zuroff called case #2015-0071 and reviewed standard hearing procedure.

The Petitioner's Attorney, Robert Allen of the Law Office of Robert Allen (300 Washington Street, Brookline, MA) waived the reading of public hearing notice and introduced property owners David and Susan Samuels and Project Architect Jan Gleysteen

Attorney Allen stated that Mr. and Mrs. Samuels purchased the vacant lot in 2015. The prior mid-century modern structure located on the lot was demolished and the Petitioners believed that the proposal currently before the Board complied with all zoning requirements. Upon Building Department review, it was determined that By-Law Section 5.54.2 is applicable and generates the need for increased front setback requirements due to the average alignment of adjacent structures located at 10 Heath Street and 70 Lyman Road.

Attorney Allen described the subject property as a "pie-shaped" lot along a significant curve in Lyman Road, which is a private way. Attorney Allen stated that this neighborhood has experienced significant recent development of large single-family homes. Attorney Allen stated that this structure will be owner occupied and is smaller (gross floor area) than many of the surrounding new structures. This triangular shape also creates two rear lot lines so the Petitioner is also requesting relief for the required 50 foot rear yard setback.

Attorney Allen confirmed that the gross floor area calculations are inaccurate on plans submitted to the Board because approximately 150 square feet of the proposed three-car garage was omitted. The Petitioner is proposing to eliminate finished basement space in order to maintain compliance with floor area requirements.

Project Architect Jan Gleysteen reviewed project plans with the Board. Mr. Gleysteen specifically noted an effort to design a structure that disrupts the overall massing by incorporating various heights and angles while also following the curve of the front yard. This design strategy maintains significant greenspace buffer areas in the rear yard. Mr. Gleysteen believed that the enhanced front yard setback requirement severely reduces the buildable area provided by this lot, and compliance with this setback distance would force the bulk of the structure to be moved toward the rear thus disrupting the deliberate rear greenspace buffer. Mr. Gleysteen stated that adjacent property owners support the current design submitted to the Board.

Mr. Gleysteen further stated that the intent of By-Law Section 5.54.2 is to encourage streetscape consistent. Mr. Gleysteen believed that his design fully embraces the existing streetscape from an urban design standpoint. Mr. Gleysteen concluded his comments by reviewing proposed landscaping features to serve as counterbalancing amenity and enhance the existing greenspace buffer areas.

Board Member Poverman questioned why the Petitioner could not reach a design for new construction that fully complies with setback requirements.

Attorney Allen stated that the single-family structure as designed would comply with the standard 30 foot front yard setback requirement but the average alignment provision results in a 60 foot requirement that is not feasible on this uniquely shaped lot. Attorney Allen further stated that the intent of this provision is the maintain streetscape consistency which the design of the structure more than attempts to accomplish. The proposed 30-35 foot setback maintains a usable rear yard and important buffer space as previously stated. Attorney Allen also noted that a rear yard grade change further reduces the buildable area if the 60 foot front setback requirement was met. For these reasons, Mr. Allen believed the 60 foot setback provision is unfairly burdensome and is generated by the location of newly constructed adjacent homes that are situated on more traditionally shaped rectangular lots. Attorney Allen concluded his comments by reviewing project compliance with Zoning-Bylaw Section 9.05 standards for the grant of a special permit. Attorney Allen also confirmed that By-Law Section 5.43 can be applied to grant special permit relief from both front and rear yard setback requirements.

Board Chairman Zuroff called for public comment in favor of, or in opposition to, the Petitioner's proposal.

No members of the public commented.

Board Chairman Zuroff requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board. Mr. Rosa stated that The Planning Board unanimously supported the construction of this single-family dwelling. Board Members felt that the house was well designed and particularly liked the configuration of the structure on lot because it breaks up the massing of the front façade and maximizes open space and sun exposure in the rear yard. Mr. Rosa noted that several area residents on Lyman Road and Cutler Lane, which are private ways, expressed concern about potential damage done to these ways by large construction vehicles. Mr. Rosa confirmed that the Planning Board unanimously recommended approval of the site plan by professional land surveyor Bruce Bradford dated 9/30/2015 and revised 10/21/2015, and the architectural plans by registered architect Jan Gleysteen, dated 9/28/2015 and revised 1/20/2016, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final site plan, floor plans and elevations 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 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 floor plans and 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.

Board Chairman Zuroff requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that the By-Law Section 5.54.2 provision is unique in this instance because the subject property includes one single front lot line that is a “sweeping curve”. Unlike a standard corner lot, this configuration does not allow the property owner to incorporate side yard setback requirements which are typically less stringent in terms of the setback distance required. Mr. Yanovitch believed that the project before the Board is well designed for the lot. Mr. Yanovitch was also hesitant to consider requirements of a potential approval that may force the Petitioner to monitor the condition of Lyman Road and/or Cutler Lane because a large number of new construction projects have occurred in the area recently and it is difficult to clearly determine the causality of potential damage to these private ways. Mr. Yanovitch concluded his comments by ensuring that the Building Department would work with the Petitioner to ensure compliance with all imposed conditions and building codes if the Board does find that the standard for the grant of a special permit is satisfied.

Board Deliberation

Board Chairman Zuroff stated that he appreciates the mid-century modern architecture that is common in the Lyman Road neighborhood however this area is not a designated local historic district and standard demolition review practices were followed prior to removing the original structure on this lot. Mr. Zuroff believed the subject lot to be unique due to the discussed “pie shape” and the intent of the Section 5.54.2 provision of average alignment is perhaps not appropriately applied in this instance. Mr. Zuroff stated that the proposed design of the single-family dwelling is meant to maintain a uniform streetscape and that goal does not derogate from the intent of the Zoning By-Law.

Board Member Liss agreed that the curved lot and the application of By-Law Section 5.54.2 provisions are a bit unique. Mr. Liss also believed that the calculated 60 foot front-yard setback requirement is a direct result of the location of adjacent structures, which are both recently constructed single-family dwellings. Mr. Liss believed that the property owner is essentially forced to use the average setback of adjacent structures that were situated away from the respective front lot lines by the choice of the developer/owner. Mr. Liss also noted that these adjacent parcels are more “traditional” rectangular shaped lots.

Board Member Poverman reiterated that this is a new construction project and the subject lot does still provide an adequate buildable area even with the enhanced front setback requirement. Ms. Poverman also stressed that further modification of the neighborhood streetscape, in concert with the demolition of several area homes, is an issue that should warrant more consideration by the Board in when evaluating the standards for the grant of a special permit.

Mr. Liss stated that the 60 foot average alignment requirement is not of the Petitioner’s own creation and no zoning relief is required for the proposed floor area ratio.

Attorney Allen stated that he generally supports the intent of the average alignment provision and appreciated Ms. Poverman’s concern that new construction should often make every effort to comply with baseline zoning requirements however Attorney Allen believed that any new construction on this currently vacant lot would most likely trigger the need for front or rear yard setback relief. Attorney Allen stated that even if the proposed structure were to be pushed back from the front lot line to comply with the 60 foot requirement the project would still require special permit relief for the resulting rear yard setbacks.

Board Members concurred that the Town has limited authority to delay demolition requests because the subject property is not located within a local historic district. The Board also agreed that the proposal, as currently designed, is worthy of special permit relief. Board Chairman Zuroff specifically cited compliance with Zoning By-Law Section 9.05 and 5.43 standards for the grant of a special permit. The Board agreed that undue responsibility for potential damage to Lyman Road and/or Cutler lane cannot feasibly be placed on this property owner alone, however the Board did support the condition that construction vehicles associated with construction at 30 Lyman Road should not utilize portions of these private ways beyond the 30 Lyman Road lot itself.

Unanimous Board grant of requested relief, subject to the following revised conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final site plan, floor plans and elevations 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 a final landscape plan indicating all counterbalancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Construction vehicles associated with site work and construction at 30 Lyman Road shall not utilize Cutler Lane for the purposes of parking, ingress, or egress.
4. 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 floor plans and 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.

171 High Street – Construct a two-story rear addition

Board Chairman Zuroff called case #2015-0040 and reviewed standard hearing procedure.

The Petitioner's Attorney, Robert Allen of the Law Office of Robert Allen located at 300 Washington Street, Brookline, MA waived the reading of public hearing notice for the record and stated that the Petitioner is seeking a case continuance to February 23, 2016. Attorney Allen stated that this case was opened, heard, and continued at a prior date therefore the same three Board Members are required to re-open Board discussion on the matter. Attorney Allen confirmed that February 23, 2016 is the soonest available date that these Board Members are available.

The Board had no objection to this request and unanimously granted a case continuance to February 23, 2016.

Unanimous Board approval of draft hearing minutes from 2/11/16

Hearing Closed.