



# *Town of Brookline*

## *Massachusetts*

**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2015-0071  
DAVID & SUZANNE SAMUELS  
30 LYMAN ROAD, BROOKLINE, MA

Petitioners, David and Suzanne Samuels, applied to the Building Commissioner for permission to construct a new single-family dwelling in the front and rear yard setbacks. The application was denied and an appeal was taken to this Board.

The Board 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 February 18, 2015 at 7:15 p.m., in the Selectmen's Hearing Room 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 February 4, 2016 & February 11, 2016 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. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

**30 LYMAN RD – CONSTRUCT NEW SINGLE-FAMILY DWELLING TO REPLACE DEMOLISHED STRUCTURE, in an S-25, Single-Family, residential district, on**

**February 18, 2016, at 7:15 PM in the 6<sup>th</sup> Floor Selectmen's Hearing Room  
(Petitioner/Owner: SAMUELS DAVID & SUZANNE) Precinct 14**

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

- 1. Section 5.43: Exceptions to Yard and Setback Regulations**
- 2. Section 5.50: Front Yard Requirements**
- 3. Section 5.54.2: Exceptions for Existing Alignment**
- 4. Section 5.70: Rear Yard Requirements**
- 5. Any Additional Relief the Board May Deem Necessary**

*Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: [www.brooklinema.gov](http://www.brooklinema.gov).*

*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 Town programs and services may make their needs known to **Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at [rsneirson@brooklinema.gov](mailto:rsneirson@brooklinema.gov).***

*Jesse Geller, Chair  
Christopher Hussey  
Jonathan Book*

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Mark G. Zuroff and Board Members Avi Liss and Kate Poverman. Deputy Building Commissioner Michael Yanovitch and Zoning Coordinator Jay Rosa were also present. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance were property owners David and Suzanne Samuels, along with project architect Jan Gleysteen, Jan Gleyseen Architects, Inc., 333 Worcester Street, Wellesley, MA 02482.

Chairman Zuroff called the hearing to order at 7:15 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the Petitioners purchased the vacant lot in 2015 after the prior mid-century modern single-family dwelling was demolished. Mr. Allen stated that upon review of the plans, the Building Department determined that **Section 5.54.2** of the Zoning By-Law applied due to the average front yard alignment of adjacent structures located at 10 Lyman Road and 50 Lyman Road.

Attorney Allen described the subject property as a “pie-shaped” lot along a significant curve in Lyman Road. Mr. Allen stated that this neighborhood has experienced significant development of large single-family homes in recent years. Attorney Allen stated that the proposed structure will be owner occupied and has less gross floor area than many of the surrounding new structures. He noted that the triangular shape creates two rear lot lines and the Petitioners are also requesting relief for the required 50 ft. rear yard setback.

Attorney Allen confirmed that the gross floor area calculations are inaccurate on plans submitted to the Board because approximately 150 s.f. of the proposed three-car garage was omitted. He stated that the Petitioners propose to eliminate finished basement space in order to maintain compliance with floor area requirements.

Project Architect Jan Gleysteen reviewed project plans. Mr. Gleysteen specifically noted an effort to design a structure that disrupts the overall massing by incorporating various heights and angles that follow the curve of the front yard. He stated that this design strategy maintains significant green-space buffer areas in the rear yard. He believed that the enhanced front yard setback requirement reduces the buildable area provided by this lot and compliance with the setback distance would force the bulk of the structure to be relocated toward the rear thus disrupting the deliberate rear green-space buffer. Mr. Gleysteen stated that adjacent property owners support the current design. Mr. Gleysteen further stated that the intent of **Section 5.54.2**

of the Zoning By-Law is to encourage streetscape consistency. Mr. Gleysteen stated that this design embraces the existing streetscape from an urban design standpoint. He concluded his comments by reviewing proposed landscaping features.

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

Attorney Allen stated that the proposed single-family structure would comply with the standard 30 ft. front yard setback requirement, but for the fact that the average alignment of 10 and 50 Lyman Road results in a 60 ft. requirement. Mr. Allen stated that it is not feasible to maintain the front yard alignment without also triggering the rear yard setback on the uniquely shaped lot. Mr. Allen stated that the intent of the alignment provision is to maintain streetscape consistency, which the design of the structure attempts to accomplish. He noted that the proposed 30 ft. setback maintains a usable rear yard and important buffer space as previously stated and that a rear yard grade change further reduces the buildable area if the front setback requirement was enforced. For these reasons, Mr. Allen believed the 60 ft. setback provision is unfairly burdensome and is generated by the location of newly constructed adjacent homes that are situated on more traditional rectangular lots.

Attorney Allen stated that the Petitioners request relief from Sections 5.50 and 5.54.2 of the Zoning By-Law for the front yard alignment. Mr. Allen stated that the Petitioners also request relief from Section 5.70 of the Zoning By-Law where the required rear yard setback is 50 ft., existing setback is 28.2 ft. and proposed is 45.2 ft.

Attorney Allen discussed special permit relief under Section 9.05 of the Zoning By-Law arguing: (1) the specific site is an appropriate location because of the reverse pie-shaped lot that requires relief in order to maintain the existing space between the homes at 10 and 50 Lyman

Road; (2) there will be no adverse effect on the neighborhood where immediate abutters support the proposal; (3) there will be no nuisance or serious hazard to vehicles or pedestrians where the proposed three-car attached garage will shield vehicles from the streetscape and improve site circulation; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) the development will have no effect on the supply on housing available for low and moderate income people.

Finally, Mr. Allen discussed relief under Section 5.43 of the Zoning By-Law, which allows the Board of Appeals to waive side and rear yard setback requirements if a counterbalancing amenity is provided. He stated that the Petitioners have provided a significant landscaping plan.

Mr. Zuroff then called for public comment in favor of, or in opposition to the Petitioner’s proposal. No one spoke in favor or in opposition to the proposal.

Mr. Rosa delivered the findings for the Planning Board:

**FINDINGS:**

1. Section 5.50 – Front Yard Setback Requirement
2. Section 5.70 – Rear Yard Setback Requirement

<b>Dimensional Requirements</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>	<b>Relief</b>
<b>Front Yard Setback</b>	60 ft.	Before Demolition 49.9 ft.	31.2 ft.	Special Permit** Variance
<b>Rear Yard Setback</b>	50 ft.	Before Demolition 28.2 ft.	5.2 ft.	Special Permit** Variance

\* Under Section 5.54.2, if the alignment of two or more existing building on adjacent lots is farther from the street than the required front yard depth, the average of the existing alignment of all buildings within 150 ft. shall be the required front yard. Based on the adjacent setbacks, the 30 ft. front yard requirement for this parcel is increased to 60 ft.

\*\*Under Section 5.43, the Board of Appeals may waive yard and setback requirements if counterbalancing amenities are provided. The applicant is proposing extensive landscaping at the front yard as the counterbalancing amenity.

Mr. Rosa stated that the Planning Board unanimously supported the construction of this single-family dwelling. He stated that the Planning Board felt that the house was well designed and appreciated the configuration of the structure on the lot because it breaks up the massing of the front façade and maximizes open space and sun exposure in the rear yard. 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.

Chairman Zuroff requested that Mike Yanovitch review the findings of the Building Department. Mr. Yanovitch stated that Section 5.54.2 of the Zoning By-Law is unique in this instance because the subject property includes a single front lot line that is a “sweeping curve”. He noted that unlike a standard corner lot, this configuration does not allow the property owner to incorporate side yard setback requirements that are less stringent in terms of the setback distance required. Mr. Yanovitch believed that the project is well designed for the lot. He was 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 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 Petitioners 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.

In deliberation, Chairman Zuroff stated that he appreciates the mid-century modern architecture that is common in the Lyman Road neighborhood; however this parcel 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 that the lot is unique due to the reverse "pie shape" and the application of Section 5.54.2 of the Zoning By-Law is not appropriate in this instance. Mr. Zuroff stated that the proposed single-family dwelling maintains 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 Section 5.54.2 of the Zoning By-Law is unique. Mr. Liss believed that the calculated 60 ft. front yard setback requirement is a direct result of the location of adjacent structures that are both recently constructed single-family dwellings. He stated that Petitioners are forced to use the average setback of adjacent structures that were situated away from the respective front lot lines by a recent developer/owner. Mr. Liss also noted that the adjacent parcels are more "traditional" rectangular shaped lots.

Board Member Poverman reiterated that this is new construction and the subject lot provides an adequate buildable area even with the enhanced front yard setback requirement. Ms.

Poverman stressed that further modification of the streetscape, in concert with the demolition of several area homes, is an issue that should warrant more consideration by the Board.

Mr. Liss stated that the 60 ft. requirement is not of the Petitioners' 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 make every effort to comply with baseline zoning requirements; however, he believed that any new construction on this lot would trigger the need for front or rear yard setback relief. He stated that even if the proposed structure were to be pushed back from the front lot line to comply with the 60 ft. requirement the project would require relief for the resulting rear yard setback.

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 is worthy of the requested relief.

Chairman Zuroff specifically cited compliance with Sections 5.43 and 9.05 of the Zoning By-Law. The Board agreed that responsibility for potential damage to Lyman Road and/or Cutler lane cannot feasibly be placed on the Petitioners alone. The Board stated support for a condition that limited construction vehicles associated with 30 Lyman Road from utilizing portions of the private ways in this area.

The Board then determined, by unanimous vote that the requirements for a special permit for Sections 5.50 , 5.54.2, and 5.70 of the Zoning By-Law pursuant to Sections 5.43 and 9.05 of the Zoning By-Law were met. 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.

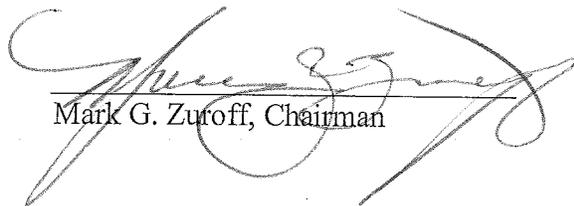
- b. The use as developed will no adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will not have any effect on the supply of housing available for low and moderate income people.

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

Unanimous Decision of  
The Board of Appeals

Filing Date: 3/21/16

  
Mark G. Zufoff, Chairman

A True Copy  
ATTEST:

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Patrick J. Ward  
Clerk, Board of Appeals