



# Town of Brookline Massachusetts

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Patrick J. Ward, Clerk

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

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TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2017-00018  
SYK SKY LLC C/O YEE WONG  
8 LYON ROAD, BROOKLINE, MA

Petitioner, Yee Wong, applied to the Building Commissioner for permission to construct a single-family home. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed January 25, 2018, 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 Petitioners, 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 11, 2018 and January 18, 2018 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:

8 LYON ROAD, BROOKLINE, MA 02467 - Demolition of existing home, construction of new home as per plans by Dennis Colewell Architects Inc in a(n) S-7 SINGLE-FAMILY on 01/25/2018 at 7:15PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Jeremiah Foster) *Precinct 15*

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:

Mr. Foster stated that as proposed, there is no zoning relief required for setbacks. He noted, however, that the abutters have been in contact and requested the siting of the building be moved closer to Lyon Road to provide better privacy. Mr. Foster further stated that an exact distance had not yet been determined, as the request was only raised earlier in the day.

Mr. Foster then described current setbacks in the neighborhood and noted that while the proposed 8 feet meets the zoning requirement, it would create a more private and ideal condition to move the home away from the side yard setback and into the front yard setback. Mr. Foster argued that after an analysis of the surrounding neighborhood, it would not be detrimental to the neighborhood. Mr. Foster stated that upon his review, many of the existing homes in the neighborhood currently exceed the allowable FAR.

Upon inquiry from Board Chairman Zuroff, Mr. Foster stated that the change in setback has not been reviewed by the Planning Board. Mr. Foster noted that the change is on behalf of the neighborhood, particularly for Susan Woodward, homeowner at 290 Arlington Road.

Chairman Zuroff stated that the Zoning Board of Appeals would need to opine on whether or not the proposed changes are appropriate. Mr. Zuroff reviewed the standard procedure applications follow for zoning relief.

The Board discussed the basement and future conversion from ten years. Mr. Foster was amenable to a condition limiting that space. Mr. Foster stated that the mechanical equipment takes up space in the basement.

Board Member Meiklejohn requested the Petitioner proposed a specific setback requested. Mr. Foster stated that a definitive front yard setback had not yet been decided between his client and Ms. Woodward.

Chairman Zuroff asked whether anyone was present in support of the proposal. No one

commented in support of the proposal. Chairman Zuroff asked whether anyone was present in opposition to the proposal. No one commented in opposition to the proposal.

Chairman Zuroff asked if anyone had any comments in general to the proposal. Sue Woodward, 290 Arlington Road, Brookline, stated that she is not opposed to the proposal and felt that it will be an improvement to the neighborhood and is appropriate in scale. Ms. Woodward stated that her home is very close to the property line, where the new house will be 8 feet away. For these reasons, Ms. Woodward stated, she would appreciate if the house was relocated closer to Lyon Road to provide her and her family more privacy. Janice Kahn, TMM Pct. 15, resident of the neighborhood, stated that the proposal is a welcome change to the neighborhood. Ms. Kahn noted that the issues described by Ms. Woodward are important to consider to maintain privacy between the homes. Ms. Kahn further stated that the property has peat and so special attention will need to be paid towards the foundation method, especially considering the close proximity to the wetlands. Mr. Foster stated that the project will need to meet strict requirements through the Conservation Commission.

Chairman Zuroff then called upon Ashley Clark, Zoning Coordinator & Planner, to deliver the findings of the Planning Department:

#### **FINDINGS**

**Section 5.09.4 – Design Standards** The most relevant sections of the design review standards are described below:

**a. Preservation of Trees and Landscape** - During the construction of this home only two trees will need to be removed allowing more light and air to circulate around the remaining trees to promote better growth. Numerous trees and plantings will be added to the landscape upon completion of the home construction.

**b. Relation of Buildings to Environment** - The proposed structure has been designed in a way that it will sit in the middle of the lot allowing trees and plantings to be placed on the property to create a landscape that will help the structure blend into the lot and neighborhood. The natural features of the existing lot will not only be maintained but also be improved.

**c. Relation of Buildings to the Form of the Streetscape and Neighborhood** - The proposed structure

has been designed to meet all site setbacks and FAR requirements for the neighborhood (excluding the proposed basement that will have no effect on the appearance of the structure). We have submitted an overview of the surrounding structures; the proposed structure is similar in both size and form to many of the existing structures in this neighborhood.

**d. Open Space** - The proposed home is on a corner lot and will be further from the abutting neighbors on Lyon Rd. than the existing structure allowing more open space between the two buildings as well as allowing for more landscape and plantings to be placed between the structures.

**e. Circulation** - While the location of the driveway and walkways will change the number of curb cuts and entrances to the roadway will not change. In addition the driveway will be placed further from the abutters driveways and walkways than the exiting driveway.

**f. Stormwater Drainage** - The impervious area of the proposed structure will not be substantially different and may be less than the existing structure depending on the landscape surfaces chosen by the owner.

**g. Utility Service** - All gas, sewage and utilities will be placed underground as to improve the visual impact of the proposed structure.

**h. Advertising Features** - N/A

**i. Special Features** - There will be no special features on the proposed structure.

**j. Safety and Security** -The proposed structure will be built to meet and exceed all code requirements for egress. The structure will be accessible from three sides by the current Brookline Fire Ladder apparatus and will be accessible on four sides by applicable ground ladders. The structure will in no way impede on potential surveillance of the neighborhood.

**k. Heritage** - The structure to be removed has not only been categorized as non-significant but had also become blight on the neighborhood as the previous owners had let it slip into disrepair.

**l. Microclimate** - If anything this structure will be increasing the number of plantings and will create a positive effect on the environment.

**m. Energy Efficiency** - The proposed structure will be utilizing energy star appliances, closed cell insulation and energy star windows and doors creating a building that will increase efficiency and decrease the energy consumption in comparison to the existing structure.

#### **Section 5.09.2.n**

n. any construction of newly created space, whether or not habitable, finished or built out, where such space substantially satisfies the requirements for habitability under the State Building Code or could with the addition of windows or doors and without other significant alterations to the exterior of the building be modified to substantially meet such habitability requirements, and which space if finished or

built out or converted to habitable space would result in the total Gross Floor Area of the structure being greater than the permitted Gross Floor Area in Table 5.01. In granting any such special permit, the Board of Appeals, in addition to the requirements of §5.09 and §§9.03 to 9.05, shall be required to find that the massing, scale, footprint, and height of the building are not substantially greater than, and that the setbacks of the building are not substantially less than, those of abutting structures and of other structures conforming to the zoning by-law on similarly sized lots in the neighborhood. In granting a special permit for construction of such non-habitable space, the Board of Appeals shall set forth as a condition of the special permit the extent to which such space may or may not be converted to habitable space in the future pursuant to Section 5.22 or otherwise, with the allowed future conversion to habitable space no greater than the applicant’s representation of the intended amount of future conversion.

**Section 5.22 – Floor Area Ratio**

<b>Floor Area</b>	<b>Allowed</b>	<b>Proposed</b>	<b>Allowed by Special Permit in 10 years</b>	<b>Finding</b>
<b>Floor Area Ratio (% of allowed)</b>	.35 (100%)	Without finished basement: .35 (100%)  With finished basement: .49 (140%)	.46 (130%)	<b>Special Permit</b>
<b>Floor Area (s.f.)</b>	2,632	Without finished basement: 2,632  With finished basement: 3,717	3,459	

**Section 5.60 – Front yard setback requirements**

Ms. Clark stated that the Planning Board is supportive of this proposal for a new house. She noted that the Board finds the proposed structure to be reasonably sized for the neighborhood (as shown by an analysis provided by the applicant) and attractively designed and the FAR, not including the unfinished basement and attic space, is below what is allowed. Ms. Clark further stated that the Board would like to make the applicant aware that if they were to finish the basement in ten years under a special permit, they would not be able to finish the entire space and they must remain under 130% of the allowable FAR (or whatever FAR is allowable at that time). She noted that other homes of similar

massing and scaling exist nearby. Ms. Clark added that the Board would like to see some refinements to the design, including the garage doors and the living room windows and a landscaping plan that indicates that the existing curb cut will be closed. Finally, Ms. Clark concluded that the Planning Board also has no objection to the granting of a special permit to the front yard setback and applauds the applicant for working with the abutter on an acceptable location.

Therefore, Ms. Clark stated, the Planning Board recommends approval of the site plan by Christian Albert Farland, dated 11/2/17, and the architectural plans by Dennis Colwell Architects dated 9/22/17, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final site plans, floor plans and elevations including basement mechanical space, 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 landscaping plan subject to the review and approval of the Assistant Director of Regulatory Planning.
3. The extent to which any non-habitable space may be converted to habitable space in the future, in addition to other relevant By-law sections, must comply with §5.22 of the Zoning By-law.
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 elevations stamped and signed by a registered architect or engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff then called upon Michael Yanovitch, Deputy Building Commissioner, to deliver the recommendation of the Building Department. Mr. Yanovitch stated that the advertisement has a clause that states, "Any additional relief the Board may find necessary." Mr. Yanovitch stated that the Building Department has no objection to the proposal relief requested. Therefore, should relief be granted, the Building Department will work with the Petitioners to ensure compliance.

The Board discussed the new zoning relief required by moving the structure into the front yard setback. Chairman Zuroff stated that if the specific section is not advertised in the notice it would be subject to an appeal. Mr. Foster was amenable to advertising the new relief, returning to the Planning Board and then coming back for the Zoning Board of Appeals to deliberate and render a final decision.

*Chairman Zuroff concluded the hearing until February 22, 2018.*

The subsequent meeting was noticed as follows:

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed February 22, 2018, in the Select Board's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioners, 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 8, 2018 and February 15, 2018 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:

8 LYON ROAD, BROOKLINE, MA 02467 - Demolition of existing home, construction of new home as per plans by Dennis Colewell Architects Inc in a(n) S-7 SINGLE-FAMILY on 02/22/2018 at 7:00PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Jeremiah Foster) *Precinct 15*

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:

§5.09.2.N – DESIGN REVIEW

§5.43 - EXCEPTIONS TO YARD AND SETBACK REGULATIONS

§5.50 - FRONT YARD REQUIREMENTS

Any additional relief the Board may find 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 programs and services of the Town of Brookline are invited to make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at [llgellineau@brooklinema.gov](mailto:llgellineau@brooklinema.gov)*

*Jesse Geller, Chair  
Christopher Hussey  
Mark G. Zuroff*

**Publish: 02/08/2018 & 02/15/2018**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Mark G. Zuroff and Board Members Johanna Schneider and Randolph Meiklejohn. Also present at the hearing was Zoning Coordinator, Ashley Clark.

Mr. Foster provided the Board with an update on returning to the Planning Board. He stated that the Planning Board reviewed a proposed setback that moved the home 3 feet towards Lyon Road and were unanimously in support.

Chairman Zuroff called for public comments in support to the proposal. Janice Kahn, spoke in support. Chairman Zuroff called for public comments in opposition to the proposal. No one submitted any comments.

Chairman Zuroff then called upon Ashley Clark, Zoning Coordinator & Planner, to deliver the findings of the Planning Department:

Ms. Clark stated that the Planning Board was supportive of this change. She added that the Planning Board discussed existing setbacks in the neighborhood and the Planning Board felt that there are a range of setback conditions. Ms. Clark therefore stated that the Planning Board did not feel moving the home closer to Lyon Road would be out of context with the neighborhood. Ms. Clark recommended



amending condition #1 from the Planning Board report to “prior to the issuance of a building permit, the applicant shall submit final site plans indicating the new setback closer to Lyon Road, floor plans and elevations including basement mechanical space, subject to the review and approval of the Assistant Director of Regulatory Planning.”

Upon inquiry from Chairman Zuroff, Ms. Clark stated that the Building Department had no additional comments to add.

The Board then deliberated on the merit of the special permit requested. Chairman Zuroff stated that as a procedural matter the Petitioner went before the Planning Board to opine on the new setback and that during the hearing on January 21, 2018 the Board had already discussed the request for relief at length. Mr. Zuroff stated that with the Planning Board approval and amendment to condition number one he is in support of granting the requested relief. Board Members Schneider and Meiklejohn concurred.

The Board then determined, by unanimous vote that the requirements for a special permit from **Section 5.09.2.n** and **Section 5.50** pursuant to **Sections 5.43** and **Section 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 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. Development will have no 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:

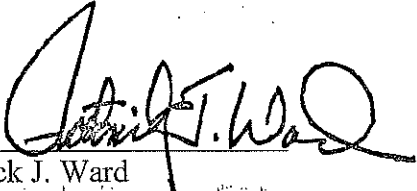
1. Prior to the issuance of a building permit, the applicant shall submit final site plans indicated new setback condition, floor plans and elevations including basement mechanical space, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscaping plan indicating all counter balancing amenities subject to the review and approval of the Assistant Director of Regulatory Planning.
3. The extent to which any non-habitable space may be converted to habitable space in the future, in addition to other relevant By-law sections regulating FAR, must comply with §5.22 of the Zoning By-law.
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 elevations stamped and signed by a registered architect or engineer; 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: 3/14/2018

  
Mark G. Zuroff, Chairman

A True Copy  
ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals