



TOWN OF BROOKLINE

Massachusetts

BOARD OF APPEALS

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PATRICK J. WARD, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
NO. BOA070029

Petitioner, Steven Friedberg and Jayne Bennett Friedberg applied to the Building Commissioner for permission to construct an addition to the single family residence at 297 Buckminster Road, including the addition of a screened porch and sundeck, an enlargement of the kitchen and partial enclosure of the second floor porch and an additional parking area.

The application was denied and an appeal was taken to this Board.

On April 26, 2007, 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 June 7, 2007 at 7:15 P.M. in the Selectmen's Hearing Room on the sixth floor of Town Hall as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the petitioner, to its attorney, to the owners of 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 hearings were published on May 17, 2007 and May 24, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
 MASSACHUSETTS
 BOARD OF APPEALS
 NOTICE OF HEARING

PETITIONER: Friedberg, Steven and Jayne Bennett
 LOCATION OF PREMISES: 297 Buckminster Road

DATE AND PLACE OF HEARING: Thursday, June 7, 2007 at 7:15 PM in the Selectmen's
 Hearing Room on the sixth floor of Town Hall, 333 Washington Street,
 Brookline, Massachusetts

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

- 1) 4:07; Table of Use Regulations; Use #54; Variance Required; Use #55; Special Permit Required
- 2) 5.01; Table of Use Dimensional Requirements; Footnote #1; Variance Required
- 3) 5.20; Floor Area Ratio; Variance Required.
- 4) 5.43; Exceptions to Yard and Setback Regulations; Special Permit Required.
- 5) 5.60; Side Yard Requirements; Variance Required.
- 6) 5.70; Rear Yard Requirements; Variance Required.
- 7) 5.71; Projections into Rear Yards; Variance Required.
- 8) 5.72; Accessory Buildings or Structures in Rear Yards; Variance Required.
- 9) For the design of All Off-Street Parking Facilities;
 - 6.04.2.f; Variance Required.
 - 6.04.3; Special Permit Required.
 - 6.04.4. c; Special Permit Required.
 - 6.04.5.c;2. Variance Required.
 - 6.04.5 c.3; Variance Required.
 - 6.04.9.b; Variance Required.
 - 6.04.12; Special Permit Required.
- 2) 8.02.2; Alternation or Extension; Special Permit
 Required

Of the Zoning By-Law to construct an addition; to construct
 a screened porch and a sundeck; to construct an additional parking
 area; to extend the kitchen; & to partially enclose the second floor porch
 per plans

at 297 Buckminster Road BRKL

Said premises located in an S-10 district.

Hearings once opened, may be continued by the Chair to 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 the 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.

Diane R. Gordon
Harry Miller
Bailey Silbert
Board of Appeals

On June 7, 2007 at the time and place specified in the notice a public hearing was held by this Board. Present were Chairperson Diane R. Gordon, Bailey S. Silbert and Murray G. Shocket.

The applicants were represented by attorney Kenneth B. Hoffman of Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116. Mr. Hoffman was accompanied by the petitioners' architect, Leah Greenwald of Brookline, Massachusetts, and by the landscape architect, Denis J. Chagnon, of CBA Landscape Architects of Somerville, Massachusetts. 297 Buckminster Road is a rectangular-shaped lot with a three-story single-family dwelling and a two-car garage at the rear of the lot. While the property fronts on Buckminster Road, vehicular access is provided via an easement and common drive at the rear of the property. There is a change in grade of approximately 20 feet from the front lot line to the rear lot line; the land slopes down from Buckminster Road.

Mr. Hoffman indicated that the motivating factor for the proposal was to permit access to the house from the garage at the bottom of the slope at the rear of the property without using the outdoor stairway, which is particularly treacherous in winter conditions. Because the garage, currently an accessory structure, would be connected to the house, it becomes part of the house and therefore triggers various dimensional setback requirements as detailed below. While the setback compliance changes by virtue of the connection of the accessory garage to the main

house, no actual changes to the garage are being proposed. The primary alteration would be a rear addition, 22 feet 6 inches wide by 21 feet long, consisting of approximately 472.5 s.f. and connected by a new interior stairway to the garage. The new addition would serve as a playroom and would be entirely above grade with several windows on all sides. This addition would be reached either through the garage, the dwelling's basement, which is indicated as mechanical space on the submitted plans, or by a new exterior stairway leading to a new deck on the roof of the addition. A portion of this deck would be screened, with skylights in the new roof. This screened porch and deck would be located outside of the kitchen, where there is currently a covered porch. A first floor addition approximately 5 feet 6 inches wide by 16 feet 5 inches long (approximately 91 s.f.) would expand the kitchen, requiring the removal of another covered porch. This extension involves the addition of new storage and circulation space on the playroom level below the addition for support, which would be reached by a new door and attached to the playroom addition. Finally, an existing porch on the second floor above the kitchen would be partially enclosed, an addition of approximately 15 feet 6 inches wide by 8 feet long (approximately 124 s.f.), to provide for a new laundry room. These proposed changes are shown on the plans submitted to the Board by the architect.

The applicant is also proposing to provide a new exterior parking area 24 feet wide by 21 feet deep. The parking area would be paved with permeable pavers. A new exterior stairway with retaining walls would be constructed to lead from the parking area to the playroom door. The retaining walls would be six feet or less in height. In addition to the physical changes to the house and the garage, significant landscaping would be provided as described on the landscape plan submitted by the landscape architect.

Mr. Hoffman described the topography of this property and illustrated the same with photographs which were submitted to the Board. The photographs and the site plans shows an approximate 20 foot drop from the Buckminster Road level of the property to the passageway easement in the rear. The easement provides the only vehicular access to the property. Unlike the abutting property at 291 Buckminster Road, the petitioners' house is not served by a driveway from Buckminster Road. The abutter at 305 Buckminster Road has vehicular access to a garage reached by the passageway easement, but the garage is attached to the house reachable by a long driveway. Thus, each of the three properties of which 297 is in the center, is dissimilar in the manner in which the driveways and garages provide linkage and access to the respective houses. Mr. Hoffman also concurred with the observation by the Board that the terraced construction of the rear of the house, going from one level to another, as it followed the downward slope towards the rear passageway easement, creates the opportunity to add interior space without significantly increasing the existing footprint or areas already covered with concrete patios. Thus, despite the increase in the floor area ratio, no significant amount of space that is currently open or landscaped on the lot will be improved with enclosed space. In fact, as Mr. Hoffman pointed out, the required landscaped open space on this lot is 585 s.f. and the existing or proposed amount of landscaped open space is 5,464 s.f. which far exceeds the required amount. Similarly, the required amount of usable open space under the zoning bylaw is 1,755 s.f. where this proposal provides 3,532 s.f. The 3,532 s.f. is comprised of 2,620 s.f. of landscaped space with less than eight (8%) percent slope, and 912 s.f. of landscaped space which includes the deck with a skylighted screen porch and a brick patio area.

The followings zoning relief was initially indicated by the Building Department in its denial letter dated March 19, 2007. However, for the reasons set forth below, some of the relief cited by the Building Department is no longer applicable to the petition.

Section 4.07 – Table of Use Regulations – Use #54: An accessory private garage or parking area for non-commercial motor vehicles with not more than three spaces per dwelling unit, except that there may be four spaces for a single-family dwelling on a 10,000 s.f. or larger lot. *The submitted plans indicate a parking area approximately 24 feet wide by 21 feet long, which can provide for an additional 2 full-size parking spaces. Since the lot is larger than 10,000 s.f., four spaces are allowed on the subject property.*

Section 4.07 – Table of Use Regulations – Use #55: Other private garage or parking for more non-commercial motor vehicles than permitted in Use #54. *A special permit would be required if the applicant were to park more than four vehicles on the lot. The applicant has indicated no more than four vehicles would be parked on the property.*

Section 5.01 – Table of Dimensional Requirements – Footnote #1: If the entrance to a garage or covered vehicular passageway faces toward the street to which its driveway has access, said entrance shall be at least 20 feet from the street lot line. Variance required. *This garage is a pre-existing condition, and it does not face directly onto a street, but instead leads to an access easement.*

Section 5.20 – Floor Area Ratio

	<u>Allowed By Right</u>	<u>Allowed By Special Permit</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>
Floor Area Ratio (F.A.R.)	0.30 (100%)	0.36 (120%)	0.425 (142%)	0.482 (161%)	<u>Variance*</u>
Floor Area (s.f.)	3,637.5	4,365	5,159	5,846.5	--

* Under Section 5.22.3.b.1.b, the Board of Appeals may allow by special permit an exterior addition up to 120% of the permitted gross floor area. In this case, the applicant **exceeds** the maximum FAR allowed by special permit, thus the application **requires a variance**.

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

Section 5.71 – Projections into Rear Yards: Projections from a dwelling must not be within 8 feet of an accessory building.

Section 5.72 – Accessory Buildings or Structures in Rear Yards: Accessory buildings or structures may occupy up to 25 percent of the required rear yard provided the building or structure does not exceed 15 feet in height nor is located closer than 6 feet to any side or rear lot line, nor located closer than 6 feet to a principal building.

Setback Requirements for Addition and Garage

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>

ADDITION	Side Yard Setback	10 feet	n/a	15.4 feet	Complies
	Rear Yard Setback	30 feet	n/a	50.2 feet	Complies
GARAGE	Side Yard Setback	10 feet*	6.6 feet	6.6 feet	Variance / Special Permit**
	Rear Yard Setback	30 feet*	18.4 feet	18.4 feet	Variance / Special Permit**

* Since the garage would be attached to the main dwelling under this proposal, it is considered part of the principal structure and therefore needs to meet yard and setback requirements for such structures.

** Under Section 5.43, the Board of Appeals may waive yard and setback requirements if a counterbalancing amenity is provided. The applicant has indicated landscaping would serve as a counterbalancing amenity.

Section 6.04 – Design of All Off-Street Parking Facilities

- .2.f – Parking lots shall not be designed to require cars to back into a public way to exit
- .3 – Parking lots shall allow each vehicle to enter/exit without moving another vehicle
- .4.c – Entrance and exit drives shall be a maximum of 20 feet wide at the street lot line in residence districts
- .5.c.2 – Side yard setback
- .5.c.3 – Side and rear yard setback
- .9.b – Driveways shall be graded, surfaced and drained to the satisfaction of the Building Commissioner
- .12 – Allows substitution of other dimensional requirements for new parking facilities serving existing structures by special permit

Parking Area

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Finding</u>
Parking spaces	Max: 4 spaces	2 spaces	4 spaces	Complies
Side yard setback (parking area & drive)	5 feet	1 foot (east) 47 feet (west)	1 foot (east) 25 feet (west)	Complies
Rear yard setback (parking area & drive)	5 feet	10.5 feet	10 feet	Complies
Drive width	Max: 20 feet at street lot line	39 feet	60 feet	Complies†

† The access easement at the rear property line is not a street or public way, therefore the maximum width limitation does not apply.

Section 8.02.2 – Alteration or Extension: Special permit required for altering or extending a non-conforming structure.

The petitioners, through their counsel, submitted a letter from Sylvia Kuzman and Blair Crawford of 110 Dean Road, the owners of the property to the rear and across the passageway easement from the subject property. It is noteworthy that this abutter was in favor because of the recent glass enclosed addition to the abutter's house faces the rear of 297 Buckminster Road and therefore would be most affected visually by the change. Abutters to either side were informed of the plans and no objection was expressed to the petitioners. No persons appeared in opposition to the petition.

Leah Greenwald, the architect, presented the site plan and elevations for the proposed project. She detailed the changes that were made to the site plan originally submitted. These changes were relatively minor and included adjustment to the number of rises on the steps in order to meet the level of the garage side doors. One additional riser was added between the driveway and the garage side door landing. The basement level patio was moved forward to allow for an existing air conditioning unit and stepping stones were adjusted to match the patio. A new hedge replaced the unkempt shrubs at the edge of the property adjacent to the driveway easement as shown on the previous site plan. The four trees at the rear of the property were reduce to three to allow for the high overhanging trees from the neighbor's yard. Finally, shrubs have been adjusted to coordinate with the above changes and the driveway service material is labeled as permeable pavers.

The landscape architect described the changes and additions being made to the landscaping on the property. He noted some plant materials and materials for the walkways and parking area pavers.

The Planning Board report was presented by Polly Selkoe, Assistant Director for Regulatory Planning. Ms. Selkoe cited the Planning Board comments in its report as follows:

The Planning Board is not opposed to this proposal to build a rear addition with deck and screened porch above attached to both the garage and dwelling, as well as the other proposed additions. The Planning Board is also not opposed to the expansion of the drive and parking area. Though the additional floor area would bring the total floor area of the dwelling well over the allowed F.A.R., the dwelling is already significantly over that limit, and the proposed design largely makes use of either already paved area or porch space. The new additions are not expected to significantly impact neighboring structures, and they comply with setback requirements. The needed setback relief under this proposal is for attaching the existing garage to the house, so that it now must meet the setback requirements for principal structures. Though the new parking area would create a wide drive entryway, the drive does not lead out to a public way, and several similar parking arrangements already exist along this easement. There should be little pedestrian traffic along this easement, and the lot would still conform to landscaping and usable open space requirements.

Therefore, should the Board of Appeals determine that the requirements for a variance have been met, the Planning Board recommends approval of the plans titled "Bennet/Friedberg House, 297 Buckminster Road, Brookline, Mass.," prepared by Leah Greenwald and last dated 04/09/07, and the site plan, prepared by Bruce Bradford and last dated 02/08/07, and the landscape plan, prepared by CBA Landscape Architects, and last dated 4/18/07, subject to the following conditions:

1. Prior to the issuance of a building permit, a final landscaping plan, indicating planting types and locations, walls and hardscape materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, final elevations of the additions, garage and deck shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator 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 elevations of the additions, garage and deck, 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 Board then turned to Frank Hitchcock of the Building Department who acknowledged the extreme slope and changing grade on the property and the differences in the garage or automotive access on the properties on either side of the 297 Buckminster Road. He described the climb from the garage area to the house as needing the "agility of a billy goat,"

particularly in inclement weather and acknowledged the dangerous condition that results from snow and ice on the walkway. He also acknowledged that the architecture of the house was unique in that it stepped down or was terraced to match the slope in the rear and that the proposal for each terrace or landing was to enclose that particular area, creating usable interior space. The Building Department expressed support for the application and the conditions recommended by the Planning Board.

Mr. Hoffman reviewed again with the Board the features of the lot that conformed to the variance requirements, including the extreme change of grade from Buckminster Road to the passageway easement and the nature of the terracing and the architecture of the main house which created impermeable space with foundation floors or walls, yet were not usable as interior space. We noted that the amount of excess floor area over the existing was not very great and could easily be harmonized with the architectural changes as proposed by the petitioner's architect.

The Board acknowledged the excellent work done by the architect in creating unified changes to the rear of the house, taking advantage of the terracing to add valuable useful interior space while connecting the garage to the main house to permit safe access by the people who live in the house. The Board acknowledged the slope or change in topography which created the hardship requiring an exterior trip from the parking level to the main house and the dissimilarity of this property from the residences on either side, both in terms of the topography, the terracing of the architecture to the rear of the house and the location and accessibility of the vehicular parking for those properties. The Board therefore grants the variance for floor area ratio and the special permits required as detailed above principally, for garage setbacks, side yard and rear yard setback under Section 5.43, acknowledging the extensive re-landscaping as a

counterbalancing amenity to the compromise in setbacks and further grants the special permit under Section 6.04 for the design of all off-street parking facilities to accommodate the additional parking area to the extent determined necessary, although the passageway easement at the rear of the property line is deemed not to be a street or public way, and therefore the maximum width limitations of entrance and exit drives would not apply. The Board further grants a special permit under Section 8.02.2, alteration or extension of a non-conforming structure. The Board in granting the relief imposes the following conditions and approves the plans entitled "Bennett/Friedberg House, 297 Buckminster Road, Brookline, Mass." prepared by Leah Greenwald and last dated 04/09/07, and the site plan, prepared by Bruce Bradford of Everett M. Brooks Company Surveyors and Engineers, dated with the most recent additions May 29, 2007 and further based upon the landscape plan prepared by CBA Landscape Architects last dated 04/18/07:

1. Prior to the issuance of a building permit, a final landscaping plan, indicating planting types and locations, walls and hardscape materials, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, final elevations of the additions, garage and deck shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to issuance of a building permit, the applicant shall submit to the Zoning Administrator 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 elevations of the additions, garage and deck, 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: June 22, 2007

A True Copy:
#4610231.v1

ATTEST:



Patrick J. Ward
Town Clerk



Diane R. Gordon, Chairperson