



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043
Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2011-0009

Petitioner, Seth Levenson, applied to the Building Commissioner for permission to construct a garage and addition to his home at 71 Craftsland Road. The application was denied and an appeal was taken to this Board.

On 10, February 2011, 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 17, March 2011, at 7:00p.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 his 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 3 and 10, March 2011, 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: **LEVENSON, SETH**
Owner: **LEVENSON, SETH**
Location of Premises: **71 CRAFTSLAND RD**
Date of Hearing: **March 17, 2011**
Time of Hearing: **7:00 PM**
Place of Hearing: **Selectmen's Hearing Room, 6th. floor**

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

1. **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
2. **5.51: Projections Into Front Yards, variance required.**
3. **5.54; Exceptions For Existing Alignment, variance required.**
4. **5.60; Side Yard Requirements, variance required.**
5. **8.02.2; Alteration or Extension, Special Permit Required.**
6. **Modification of Board of Appeals case #499 dtd. 28 December 1951, as required**

Of the Zoning By-Law to **construct garage and addition requiring BOA relief at 71 CRAFTSLAND ROAD BRKL.**

Said premise located in a **S-7 (single family)** residence 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, Lisa Serafin and Christopher Hussey. The Petitioner, Seth Levenson, presented his case before the Board.

Mr. Levenson explained that on 19, December 1951, a public hearing was held regarding a petition for a zoning variance to make legal the property's roofed porch added by the builder, which had not included in the plot plan submitted to the Town in 1941. The Board of Appeals granted a variance to permit the maintenance of the porch subject to the condition that the porch not be enclosed. He reported that at some time subsequent to that date, perhaps as many as two prior owners, at least ten years, it was enclosed without benefit of a building permit or waiver of the condition.

Mr. Levenson described his property at 71 Craftsland Road as a single-family two-story wood-frame dwelling located near the Newton town line on the southwesterly side of Hammond Pond Parkway between Newton and Heath Streets. The property is near Lost Pond Reservation, and neighboring properties are primary single-family homes of similar size and design. Currently, he has a single-car attached garage located to the right of the home with a wide paved driveway.

Mr. Levenson, said that he proposes to construct a new 20 ft. by 20 ft. attached two-car garage to the right side of the dwelling with a two-story addition above and to the rear. The addition will provide living area for additional bedroom and closet space at the second level. A new front entry foyer, 10 feet wide by four feet deep, is also proposed to replace the existing entrance. New stairs to provide access to the existing deck would be located behind the garage. He said that he also plans on extending the deck towards the rear approximately 8 feet, but this does not require zoning relief. Mr. Levenson said he informed and received e-mails in support of the project including the abutter closest to the proposed garage.

Mr. Levenson said that he needed dimensional relief related to the front and side yard setbacks and would like the Board to amend the 1951 decision to allow enclosure of the porch

prohibited by that decision. As to the required counter balancing amenities under **Section 5.43** of the Zoning By-Law, he said that he will be providing a landscape plan that will show new landscaping around the new garage particularly on the corner visible as you round the curve on Craftsland Road.

The Chairman asked whether anyone wished to speak in favor or in opposition to the proposal. No one rose to speak

Courtney Synowiec, Planner, delivered the findings of the Planning Board.

Section 5.43 – Exceptions to Yard and Setback Regulations

Section 5.51 – Projections Into Front Yards

Section 5.54 – Exceptions For Existing Alignment: When the alignment of two or more existing buildings on lots fronting the same side of the same street in the same block is farther from the street than the required front yard depth, the average of the existing alignment of all buildings within 150 feet of said lot shall be the required front yard. In accordance with this section, the required front yard setback is 31 feet.

Section 5.60 – Side Yard Requirements

Dimensional Requirements	Required/Allowed	Existing	Proposed	Relief
Front Yard Setback	31 ft.*	25.3 ft.	20.2 ft. (garage) 18.9 ft. (entryway)	Special Permit**
Side Yard Setback	7.5 ft.	8 ft. (est.)	4.2 ft.	Special Permit**

*See Section 5.54 explanation above.

**Under Section 5.43, the Board of Appeals may waive by special permit yard and setback requirements if counterbalancing amenities are provided. The applicant is planning on providing landscaping around the new garage as a counterbalancing amenity.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter or enlarge a pre-existing non-conforming structure. The structure is non-conforming with respect to front and side yard setbacks. *Special permit required.*

Modification – Board of Appeals case #499 dated 12/28/1951

This decision granted variance relief for an unenclosed porch 3 feet away from the side lot line. The porch has since been enclosed, and the applicant is requesting to legalize this modification.

Ms. Synowiec reported that the Planning Board was not opposed to the proposal to construct a new two-car garage and side addition, as well as a new front entry. The proposal should not

negatively impact the streetscape of this single-family neighborhood as the garage will still be setback from the street by at least 20 feet. The new garage would allow for an additional vehicle now being parked in the wide driveway to be shielded from view. New landscaping around the sides of the garage should soften its impact on the immediate neighbors and improve the overall appearance of the building. The Board would also like to ensure the tree located in front of the dwelling immediately next to the driveway, which will also help screen the garage as seen from the street, is not damaged during construction due to vehicles driving over its root structure. Protective measures for this tree should be utilized to ensure the tree is not damaged during construction. Also, the Planning Board recommended the applicant add windows to the garage in order to break up the side façade. Lastly, the Planning Board supported modifying the 1951 Board of Appeals decision in order to legalize the enclosed side porch on the west side of the dwelling. The porch has been enclosed for at least several years, and retaining it as an enclosed porch should not be a detriment to the neighborhood. Therefore, the Planning Board recommended approval of the proposal and plans, including the site plan prepared by G.R.E. Surveying and last dated 2/15/2011, and the elevations and floor plans dated 1/12/2011 and 2/9/2011, subject to the following conditions:

1. Prior to issuance of a building permit, the applicant shall submit a final landscaping plan, indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to issuance of a building permit, final elevations indicating garage window locations in the proposed addition shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
3. The applicant shall implement protective measures to shield the large front tree located near the driveway from negative construction impacts and help ensure its survival during the construction period.

4. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered land surveyor or engineer; 2) final elevations, stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard stated that the petitioner throughout the process has been very cooperative and had submitted documents in a timely manner. In order to verify the required front yard setback in light of existing alignment requirements, the petitioner submitted a plan, prepared by a Registered Land Surveyor, showing the required setback to be 31 feet. Mr. Shepard said that the plans for the addition appeared well designed and he expected the addition to compliment the neighborhood. Mr. Shepard stated that the Building Department is supportive of the project as well as the conditions recommended by the Planning Board.

During deliberations, Board Member Lisa Serafin said that she was supportive of modification of the 1951 decision that prohibited the enclosure of the porch since it was clearly done some time ago and not by the current owner. Chairman Geller stated that he would support the relief requested but was somewhat ambivalent because the setback relief was just what zoning was trying to avoid. He said that he was persuaded in this case by the petitioner's communication with his neighbors and their unanimous support for the project. Board Member Hussey said that he too was supportive of the project.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant the Special Permit relief requested and that the petitioner has satisfied the requirements necessary for relief under Sections 5.43, 5.41, 5.54 and 8.02.2, and 9.05 of the Zoning By-Law and made the following specific findings pursuant to Section 9.05 of the Zoning By-Law:

- 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.


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

- 1. **Prior to issuance of a building permit, the applicant shall submit a final landscaping plan, indicating all counterbalancing amenities, subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2. **Prior to issuance of a building permit, final elevations indicating garage window locations in the proposed addition shall be submitted to the Assistant Director of Regulatory Planning for review and approval.**
- 3. **The applicant shall implement protective measures to shield the large front tree located near the driveway from negative construction impacts and help ensure its survival during the construction period.**
- 4. **Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered land surveyor or engineer; 2) final elevations, stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.**

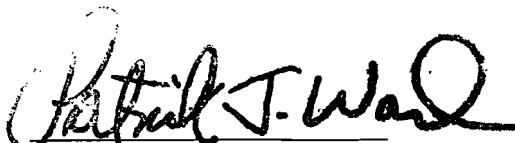
Unanimous Decision of
The Board of Appeals

Issuing Date: Msrch 25, 2011

True Copy
ATTEST:



Jesse Geller, Chairman



Patrick J. Ward

RECEIVED
 TOWN CLERK
 MAR 25 2011
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Clerk, Board of Appeals