



Town of Brookline

Massachusetts

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

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2010-0072

Petitioner, Michael Friedman, applied to the Building Commissioner for permission to demolish an existing accessory garage and construct a new garage of similar size adjacent to his home at 22 Salisbury Road. The permit was denied and an appeal taken to this Board.

On 4 November, 2010, 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 6 January, 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 16 and 23 December, 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: **Michael Friedman**
Owner: **Michael Friedman**
Location of Premises: **22 Salisbury Road**
Date of Hearing: **January 06, 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. **5.63; Accessory Structures in Side Yard, variance required**
3. **5.72; Accessory Structures in Rear Yard, variance required.**
4. **6.04.5(c)2; Design of All Off-Street Parking Facilities; variance required.**
5. **6.04.12; Design of All Off-Street Parking Facilities; special permit required.**
6. **8.02.2; Alteration or Extension; special permit required.**

Of the Zoning By-Law to demolish your existing garage and construct a new garage at 22 Salisbury Road.

Said premise located in a S-7 (single-family) residential 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, Mark Zuroff and Board Members, Christopher Hussey and Lisa Serafin.

The Petitioner, Michael Friedman, was represented by his architect, Hezekiah Pratt of Hezekiah Pratt Architecture & Design, 202 Washington Street, Boston, MA 02121.

Mr. Pratt described his client's home at 22 Salisbury Road as a two-story stucco single family home that is oriented to the side lot line, where the front entry is located. The front walk and door is located on one side of the home, while the driveway and garage is located on the other. The existing two-car garage has only one door and is built on an angle to the side lot line and house. The rear abutter to the property is the commercial strip at a slightly lower grade on Beacon Street.

Mr. Pratt said that his client is proposing to demolish the existing garage and rebuild it in a similar footprint. While the old garage was constructed on an angle to the house, the applicant is proposing to rebuild the new garage square with the house. As a result, the new garage will be slightly closer to the property line. The proposed garage will measure 21' x 22', have a hip roof and will be clad in painted fiber cement to match the house and the roof will be clad in fiberglass shingles.

The Chairman asked whether anyone in attendance wished to speak in favor or against the proposal. Judy Paradis of 26 Salisbury Road, a direct abutter said that she supports her neighbors attempt to demolish and rebuild the existing garage. However she expressed concern regarding the potential damage to a large hemlock tree near the site on her property estimated to be around 100 years old. She said she has had an arborist regularly service the tree and it is in very good health. She asked her arborist whether he would consider consulting for the Friedmans to insure its continued health through the construction process. Instead he suggested another arborist, David Donnelly, who the Friedmans retained. Mr. Donnelly subsequently

provided a letter detailing how the tree's health would be assured. The letter consisted of six steps and was accepted as Exhibit #1.

Assistant Director for Regulatory Planning, Polly Selkoe, delivered the findings of the Planning Board.

Section 5.63 – Accessory Structures in Side Yards

Accessory structures in the side yard shall not exceed 15' in height nor be located closer than 6' to the side lot line.

Section 5.72 – Accessory Structures in Rear Yards

Accessory structures in the rear yard shall not exceed 15' in height nor be located closer than 6' to the side lot line.

Section 6.04.5.c.2 – Design of Off-Street Parking Facilities

A driveway may be constructed 5' from the side lot line.

Dimensional Requirements	Required	Existing	Proposed	Relief
Side Yard Setback (Garage)	6'	.7'	1.4'	Special Permit*
Rear Yard Setback (Garage)	6'	6.2'	5.5'	Special Permit*
Side Yard Setback (Driveway)	5'	Est. 3'	Est. 3'	Special Permit*

* Under Section 6.04.12, the Board of Appeals may allow by special permit the substitution of other dimensions for the parking requirements for new parking facilities to serve existing structures, therefore Section 5.43 is not required. However, the applicant has agreed with their neighbor to work with an arborist to ensure the continued survival of the hemlock tree at 26 Salisbury Road.

Section 8.02.2 –Alteration or Extension

A special permit is required to alter or extend this non-conforming condition.

Ms. Selkoe reported that the Planning Board was supportive of the reconstruction of the garage. The new garage is slightly more conforming than the previous garage with respect to the side yard setback. Given the grade change and commercial nature of the rear abutting properties, the additional encroachment into the rear yard setback should be negligible. The applicant has worked cooperatively with the abutter at 26 Salisbury Road and has agreed to utilize the services of an arborist to ensure the survival of the neighboring hemlock tree. Therefore, the Planning

Board recommended approval of the plans by Hezekiah Pratt Architecture, dated 9/23/10, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations indicating all dimensions (including height) and materials for the garage, 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 memo by a certified arborist indicating how the hemlock tree at 26 Salisbury Road will be cared for during the course of construction, subject to the review and approval of the Assistant Director of Regulatory Planning, with a copy submitted to the owner of 26 Salisbury Road.
3. Prior to 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 plans and elevations for the garage; and 3) evidence that 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 existing garage had outworn its usefulness and the proposed structure was slightly better from a setback perspective. Mr. Shepard said that he was supportive of the recommendation conditions of the Planning Board.

During deliberation the Board Members expressed concern regarding the well being of the nearby hemlock tree. They collectively decided that another condition be included in the decision requiring the site contractor sign an acknowledgement of the sensitivity of the tree and the conditions proposed by the arborist, Mr. Donnelly. Both the petitioner and his neighbor Ms. Paradis agreed that their arborists will work together during construction for the benefit of the tree.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant special permits and that the petitioner has satisfied the

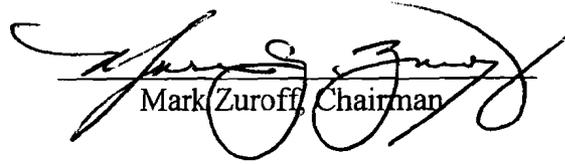
requirements necessary for relief under Section 6.04.12, as the Board of Appeals may waive dimensional requirements for new parking facilities to serve existing buildings. Also, the Board made the following specific findings pursuant to Section 9.05 of the Zoning By-Law:

- 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:

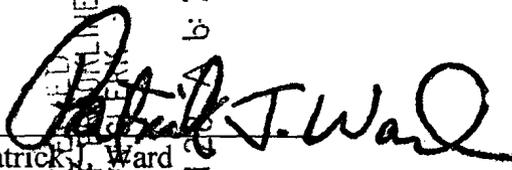
- 1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations indicating all dimensions (including height) and materials for the garage, subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2. Prior to the issuance of a building permit, the applicant shall submit a memo by a certified arborist indicating how the hemlock tree at 26 Salisbury Road will be cared for during the course of construction, subject to the review and approval of the Assistant Director of Regulatory Planning, with a copy submitted to the owner of 26 Salisbury Road.**
- 3. Prior to the issuance of a building permit, the contractor shall deliver to the Building Commissioner an acknowledgement, signed by the site contractor that he understands the sensitivity of the nearby tree and he has read and understands the recommendations of the arborist, David Donnelly.**
- 4. Prior to 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 plans and elevations for the garage; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Unanimous Decision of
The Board of Appeals


Mark Zuroff, Chairman

Filing Date: January 28, 2011

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals

TOWN OF TOWNVILLE
JAN 28 2011 6:23