



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

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Patrick J. Ward, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
NO. BOA070008

Petitioner, Richard Balzer and Patricia Bellinger, applied to the Building Commissioner for permission to renovate and restore the existing carriage barn and to install an office and studio on the first floor and to install residential guest quarters on the second floor. The application was denied and an appeal was taken to this Board.

On January 25, 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 March 8, 2007 at 7:00 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 February 8, 2007 and February 15, 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: Richard Balzer and Patricia Bellinger
LOCATION OF PREMISES: 92 High Street, Brookline

DATE AND PLACE OF HEARING: Thursday, March 8, 2007 at 7:00 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

4.07; Table of Use Regulations; Use 31; Variance
Use #29; Variance Required
Use #60; Variance Required
5.04.2; Residential Building on Rear of a Lot; Special Permit
5.09.2.k Design Review, Special Permit
5.20; Floor Area Ratio; Variance
5.43; Exceptions to Yard and Setback Regulations; Special Permit
5.60; Side Yard Requirements; Variance
5.61; Projections into Side Yard; Variance
5.70; Rear Yard Requirements; Variance
8.02.2; Alteration or Extension; Special Permit
Section 9.09; Use Variance Required

Of the Zoning By-Law to renovate and restore the existing
carriage barn and to install an office & studio on the first
first floor & to install residential guest quarters on the 2nd floor.

at 92 High Street, Brookline

Said premises located in an S-10 district.

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 March 8, 2007 at the time and place specified in the notice a public hearing was held
by this Board. Present were Chairman Harry S. Miller, Bailey S. Silbert and Enid M. Starr.

The applicant's proposal was presented through their attorney, Kenneth B. Hoffman of Holland & Knight LLP, 10 St. James Avenue, Boston, MA 02116.

92 High Street is a large lot with over twice the required lot size in the S-10 zoning district. The lot contains a single-family dwelling and a detached two-story wood-frame carriage barn (the "Barn"). A driveway exists to the left of the dwelling along the left side lot line leading to the Barn. The rest of the property is landscaped. The dwelling and the Barn are located in the Pill Hill Local Historic District. Both the dwelling (built in 1882) and the Barn (built in 1893) were designed by the architect William Ralph Emerson.

The existing dwelling is finished with a brick first floor and shingled upper floors. The front façade is formal with a deep recessed entryway, while the side façade has multiple dormers and varied window treatment. The Barn is also shingled and has a cross gambrel roof with multiple dormers. Two sets of large sliding doors on the front and a small door on the south elevation provide access to the Barn. The basement area of the Barn is partially open to the elements, especially at the rear.

The interior of the Barn remains in substantially its original interior layout with stalls for horses, a tack room, hayloft, manure chutes and carriage storage. The first floor contains 1,968 s.f. of existing floor area. The second floor in the areas where the ceiling height is 5 feet or higher contains 1,159 s.f. The total existing Barn area thus contains 3,127 s.f. of floor area that is usable and unused and, but for the floor area ratio relief sought by this appeal, cannot be used as habitable space. No modern use has been made of the Barn. Neighborhood barn dances have been held in the Barn on the first floor by the former owner, Edward Gadsby, Jr. Mr. Gadsby acquired the property in 1978. While the Barn remains largely in tact, is in fair to poor condition, apparently saved from serious decline only by "handyman" efforts of Mr. Gadsby.

The hayloft is reachable by an interior ladder. The Barn is, in its present condition, unsuitable for the parking of automobiles, since the existing wood floor cannot support the weight of modern vehicles and would require the pouring of a reinforced concrete floor if it were to be used for such purposes. Replacing the wood flooring with a concrete foundation would be costly and would destroy, at least in significant part, portions of the original interior. Moreover, the use of the Barn for parking of modern motor vehicles, even were such use and consequent alterations to be allowed under the Historic District Regulations, would account for only 762 s.f. of floor area of the first floor, leaving 1,206 s.f. on the first floor and 1,159 s.f. on the second floor that must be repaired in order to preserve the building in reasonable condition as an historic structure in the Historic District. The Barn could not be demolished without leave of the Preservation Commission which has expressed a strong desire to retain the Barn as an historical structure and thus the Commission supports the floor area ratio variance. Repairing the entire structure in order to accommodate 762 s.f. of garage space, with no lawful right to use the additional square footage in the absence of the variance, imposes a hardship arising in part from the uniqueness of the structure, the demolition of which is prohibited by the Historic District regulations. Moreover, the extreme change in grade from the front of the Barn to the rear as shown on the exhibit attached to this Decision and the "pudding stone" composition of the ground requiring blasting for new construction, makes any construction of a new structure or the replacement of the Barn, disproportionately expensive.

The owners have expressed their intention to preserve, to the extent possible, the historic features of the exterior and the interior of the Barn. Conversion of the Barn for automotive parking is not the best way to accomplish this goal and would deprive the petitioners of the reasonable use of the remainder of the building both on the first floor and the second floor .

The proposal by the owners is to create on the first floor finished interior space to house a collection of antiques owned by the owners together with a small office area within which to keep records and documents related to the collection and a one-half bath. On the second floor, the proposal is to create guest bedroom and bath (not a separate dwelling) without cooking facilities.¹ By doing so, the Barn can be preserved, thereby preventing it from further decline for want of a useful purpose.

The first floor of the Barn would continue to have a largely open floor plan, with the primary interior changes being the removal of the rear stalls and the relocation of a wall opening to create a rear storage room, the addition of a half bath at the rear and the construction of a stairway leading to the second floor. New insulated wood doors would be installed directly behind the existing rolling doors on the front façade. New posts with a beam above would be installed along the ceiling's centerline. Walls would be added to the second floor of the Barn to create a full bathroom, bedroom and closet space. Total floor area for the Barn after renovation would be 2,885 s.f.

Some of the renderings and plans indicated a proposed wood deck running alongside the south elevation of the Barn. This has been removed from the applicant's proposal and is no longer being considered.

¹ The application to the Board of Appeals was supplemented by the Petitioner to request a kitchenette be added to the guest quarters. The creation of a kitchenette in the guest quarters would convert the Barn to a dwelling and thus trigger the requirement for a use variance under Section 9.09 of the Zoning Bylaw and related sections. The request for a separate dwelling, that is, the inclusion of a kitchenette, was by leave of the Board, withdrawn by the Petitioner and thus it is not necessary for the Board to rule on any relief necessary to allow the Barn to exist as a separate dwelling unit. The applicant also withdrew its request to construct a one car garage to the side of the Barn. Thus, the relief related to the garage addition, a variance under Section 5.60 and 5.62 and 5.70 is no longer being sought by the petitioner.

The following is a description of the zoning relief required for the project:

Section 5.20 – Floor Area Ratio

Section 5.60 – Side Yard Requirements

Section 5.61 – Projections into Side Yards

Section 5.70 – Rear Yard Requirements

Section 8.02.2 – Alteration or Extension of Non-Conforming Structure – Special permit required.

	Required	Existing	Proposed	Finding
Front Yard Setback	60 feet between buildings	28.1 feet	28.1 feet	Variance / Special Permit*
Side Yard Setback	10 feet	1.6 feet	1.6 feet	Variance / Special Permit*
Rear Yard Setback	30 feet	16.1 feet	16.1 feet	Variance / Special Permit*
Floor Area Ratio	0.3 7,200 s.f.	0.299 7,175 s.f.	0.42 10,060 s.f.	Variance

* Under Section 5.43, the Board of Appeals may waive yard and setback requirements if the applicant provides a counterbalancing amenity. In this case, preservation of the carriage barn will serve as the amenity.

Historic Preservation Commission Review: Because the lot is located in the Pill Hill Local Historic District, the Preservation Commission must review and approve alterations to the carriage barn. The applicant is moving through Preservation Commission review of this application concurrently with the Board of Appeals review.

The previous findings and the following comments are based on the submitted plans, titled “92 High Street Barn” and dated 11/24/06, 11/24/07, and 1/24/07; and the submitted site plan, titled “92 High Street” and last dated 2/1/07.

Attorney Hoffman indicated that there seems to be universal agreement that it is important to restore and preserve the Barn and noted that the applicant has withdrawn the request for a second building adjacent to the Barn to serve as a single car garage. Mr. Hoffman also explained that the Barn is not suitable for automobiles. The Petitioners have agreed that they would provide for parking in the driveway onsite and not in a sheltered building in order to preserve and maintain the Barn in its current condition on the exterior and without having to destroy certain interior features of the Barn. If the Barn were to be demolished and replaced by a two car garage in approximately the same location, because of the extreme slope of the land and pudding stone ground composition, a two car garage by itself would pose significant construction

challenges. In any event, demolition of the Barn is not possible in the Historic District. Thus, the proverbial “rock and a hard place.” The Barn, even if its use were limited for parking of automobiles, must be repaired in its entirety at considerable expense. Even unused, the Barn cannot be demolished under the Historic District Regulation. Thus, a valuable existing building needs expensive work to survive another 100 years, but without the variance, the expense cannot be justified and the Barn cannot be put to reasonable use.

Mr. Hoffman also clarified the application. Notwithstanding the original Building Department denial letter, the Petitioner does not propose a retail store or a home occupation or a commercial use of the Barn. The Petitioner maintains a private collection of art or antiques and the first floor of the restored Barn would be used to house that collection. The Petitioner is not a dealer in antiquities; he has no customers and no members of the general public would be entitled to enter the property for purposes of viewing the collection. The first floor of the Barn has been characterized by some as a museum. This is also inaccurate. It is space for a private collection as if were in the confines of a private house. Mr. Hoffman indicated that, in fact, this is an ideal use because the open floor plan of the Barn works well for the collection and thus enables the Petitioners to preserve both the exterior as well as the interior of the Barn.

Mr. Hoffman indicated that the variance is for floor area ratio and stated that this relief is justified by the fact that there is an existing building with historic significance which cannot be used in its current condition for any useful purpose. Requiring the owner to preserve a large building usable in its current condition only for sheltering animals and carriages is a hardship. He indicated that the Preservation Commission, in a memorandum to the Board of Appeals, supported the floor area ratio variance in order to allow the Barn to be preserved as part of the Pill Hill Historic District. The Preservation Commission supported the dimensional relief which

basically allows the Barn to continue to exist in its current location, where it has existed for over 100 years, close to the property line on the north side and less than the required setback distance in the rear towards the east. The slope on the eastern side of the property is extreme and therefore the Barn sits quite high on the lot and is not at the same level as the nearest house on Hawthorne Street. The only condition the Preservation Commission requested the Board of Appeals impose upon the grant of the zoning relief is to prohibit any subdivision of the lot in the future and that if any future changes were to occur in the Barn that affected any of the exterior features of the building, such changes must be referred to the Preservation Commission for the issuance of a new Certificate of Appropriateness. The applicant agreed to both conditions were the Board to impose them.

Mr. Hoffman also informed the Board that the Barn has been the subject of previous relief granted by the Board of Appeals in 1972. At that time, in Case No. 1764, the then owner, Edward M. Merrick, applied to the Building Commissioner to permit the conversion of the Barn to a single family dwelling. The Board of Appeals granted that relief with the support at that time of the Planning Director as well as the Building Department. The Board at that time stated that "both of the buildings on this site were erected many years ago" The Board also said of the departure from the floor area ratio, "it does not seem unreasonable or too substantial a departure from the maximum permitted ratio." Moreover, the Board observed that the "two buildings are already in existence" and having in mind the topography at the rear of the lot and the manner in which these buildings are constructed and located, the literal enforcement of the Bylaw would prevent the proposed conversion and thus constitute a substantial hardship. Notwithstanding the grant of the relief by the Board of Appeals in 1972, the relief was allowed to lapse and Mr. Merrick reapplied to the Board of Appeals in 1974 in Case No. 1764A. The Board

noted in that decision that “The reason construction was not commenced within one year from the time of the prior granting [of the variance for a separate dwelling unit] was that he was unable to arrange financing. In addition, he was unaware of the time limitation on a previous decision. If he had, he would have applied personally for an extension of time.” Notwithstanding its previous decision, the Board in 1974 felt that in light of the “major thrust of the opposition [to the relief] is the issue of parking, this Board feels the alternate parking plans suggested by the architect should have been filed prior to this hearing as required by our Rule V. Since this has not been done, the Board hereby dismisses the petition without prejudice.” Thus, in 1974 the Board dismissed without prejudice the renewed petition for the relief sought. It is worth noting that the relief previously granted by the Board for a separate dwelling unit is not being sought by this Petitioner, since the request here is for a single bedroom and bath guest quarters only and not as a separate dwelling unit.

Mr. Hoffman then brought to the Board’s attention the comments of the Planning Board in its mandated report and advice to the Board of Appeals. The Planning Board report is dated February 16, 2007. That report provides as follows:

The Planning Board is supportive of this application to renovate and convert the existing carriage barn into a single-family dwelling for a total of two dwellings on the lot. The lot is more than twice the required minimum lot size for this zoning district, and the proposal preserves much of this land, approximately 14,770 s.f., as landscaped open space. The additional dwelling unit is not expected to overburden the property with excessive density, and it provides an economic incentive to preserve and maintain the barn not only by the current owners but future owners as well. The overall proposal also retains much of the carriage barn’s architectural integrity, though the Board is not in favor of the one-car garage addition as currently designed. Should the applicant desire to pursue the addition, it should be re-designed and reviewed by the Planning Board. The other exterior changes are relatively minimal and enable the structure to be used as living area. Though the carriage barn is located close to the side lot line, the proposal is not expected to detrimentally impact neighboring properties.

While the Planning Board report was written at the time that the application included a separate dwelling unit and therefore referred to the additional dwelling unit, the point the Planning Board made with regard to density is even more valid when the only additional density would result from the occupancy of a single bedroom guest quarters in the Barn. Given the proposed single bedroom on the second floor, one or two additional temporary occupants as guests of the owners of the main house can hardly be characterized as a significant increase in the density of people living in the neighborhood. Mr. Hoffman also pointed out that given the fact that the Barn is an unusually large building, it cannot practically be partially restored. The restoration of the building as a whole is necessary for the practical use of any portion of the building as noted by the contractor in his remarks that follow. The Planning Board also noted in its report to this Board that parking requirements, even were the Barn to be converted to a separate single family dwelling, were satisfied. Without the Barn being converted to a single family dwelling but being used as guest quarters without cooking facilities, only two spaces are required on the parcel and there is ample parking for additional cars beyond the two spaces. Moreover, the renovation of the Barn as contemplated would not affect the approximately 14,000 s.f. of landscaped open area on a parcel containing 24,000 s.f. This meets by an ample margin the required landscape open area for the S-10 zoning district. The Board, on request of the Petitioner, heard from Edward Gadsby, Jr., prior owner of the house, who wished to speak to the Board early in the proceedings because of another engagement. With the leave of the Board, Mr. Gadsby informed the Board that he lived in the house at 92 High Street for approximately thirty (30) years and that the Barn was a decrepit building with considerable rot. He said that when he moved in, he re-shingled some of the exterior himself. He acknowledged that during his ownership, the building had not been used other than for occasional barn dances. He did

comment that the new owners, the Petitioners in this matter, have done an extraordinary job of improving and restoring the main house, and he expected that a similar quality job and care would be taken with the Barn. He did observe that some of the abutters who submitted written comments in opposition to the application raised the issue of the ability of the fire department to respond to a fire in the Barn. He noted that the fire engines do not have to enter the lot, just the hoses, and that there was a fire hydrant immediately across the street from the house on High Street and that Brookline's fire department had ample ability to reach the Barn with hoses. He therefore did not think that the suggestion that there was an issue of fire safety had much merit.

The Board next heard from Henry Stone, the Petitioner's builder. Mr. Stone submitted to the Board photographs of the Barn and its interior and exterior condition. He indicated that the Petitioners had done a world class restoration of the main house and that that seemed to be their intent and interest with respect to the Barn. He said the Barn is a large building of approximately 3,000 s.f. and that to maintain the outside envelope only would cost approximately \$28,000 to re-shingle and an additional \$25,000 to paint. Moreover, he provided the Board with information about the needed structural work of the Barn in order to preserve it and maintain its long term structural soundness. He said there was a sag in the girder which needed attention and that new columns and new footings would be required in order to create a sound structure that could endure for another hundred years. He said the second floor is not structurally sound for any use whatsoever and that the flooring is full of holes and contains a substantial amount of rot. The roof structure, according to Mr. Stone, requires shoring to prevent the building's collapse or further deterioration. In addition, the masonry needs a considerable amount of work and the vaulted manure pit which served the animals in the Barn needed to be fixed and addressed. Mr. Stone testified that there were gutter and roof problems that needed continuing work in order to

preserve the integrity of the building. He estimated that it would cost approximately \$100,000 of interior framing to create habitable interior space, which he suggested is a great deal of money to spend to simply provide a 3,000 s.f. building for storage or, indeed, a portion of that building to serve as a two car garage or just to be an historic decoration in the neighborhood. This work, according to Mr. Stone, does not include the requirement of installation of heating and utilities in order to make the interior habitable. This work would cost approximately \$200 per s.f. and is important to the long term survival of the Barn.

The Board next heard from the architect, Richard Streetman, who provided an architectural description of the work being proposed in the building with drawings and elevations and described the restoration proposals. With respect to the elevations, the east elevation which is to the rear of the Barn contains large openings which need to be enclosed in order to preserve the structure of the building. This is the only change Mr. Streetman said would be made to the east side of the property. It is notable that these openings in the rear of the Barn on the east side were noted in the 1972 decision of the Board and that the abutter to the east was quoted in that decision as desiring to "see the work completed because her property abuts the rear of the carriage house which, she says, is dilapidated and a danger to the children because it is untenanted." Mr. Streetman said the north side façade would require only fixing missing windows. The west side façade would maintain the hay door and the south side would require the restoration of the façade and the potential for adding some window openings which were to be discussed with the Preservation Commission. Mr. Streetman indicated that in the interior of the ground floor he would propose to add a beam in order to preserve the existing floor joists and keep them exposed. There would be a stair installed to the second floor in lieu of the ladder that currently exists and the second floor would contain one bedroom and a bath. Mr. Streetman

further said that the renovations and the façade details which would be subject to the Preservation Commission approval, would not be conducive to a full dwelling unit given the location of window openings and the interior configuration of the Barn. It was his opinion that there was really no opportunity for the creation of a full single family dwelling in the Barn and that the Petitioner's did not so intend for the Barn to be used for such a purpose. The Board inquired of Mr. Streetman about the location of onsite parking, but that discussion was largely based upon the proposal to have a separate dwelling unit in the Barn and since that request has been withdrawn, the site easily accommodates and has accommodated parking for at least two vehicles which is required by the Bylaw. The elevations that were presented to the Board of Appeals and attached to this decision, showed the change in topography from the front of the Barn structure to the rear, an extreme slope that created a dramatic elevation differential which gives rise in part to the difficulty in enclosing the exposed foundations of the Barn and prevents that area from being reached by any vehicles were that to be proposed as a parking location. The builder testified, and it was confirmed by the architect, that the soil composition was "pudding stone" which is a very hard material that would have to be blasted were a conforming structure to be erected in lieu of the Barn. The Preservation Commission rejected a new garage structure as incompatible with the Historic District.

The Board entertained comments from the public. The first person to address the Board was Roger Reed of the staff of the Brookline Preservation Commission. He indicated to the Board that the Preservation Commission has jurisdiction over exterior changes to the Barn because the Barn is in a local historic district. He also said that the Preservation Commission, acting as the Historical Commission had an advisory role on historic issues. He acknowledged the great efforts the Petitioners have made to preserve the main house and noted that he

anticipates similar enthusiasm for completion of the Barn in a manner in keeping with its historic character. He said the Commission was concerned with the potential future conversion of the Barn as a separate dwelling, which could have an influence on, or affect the character of the neighborhood. Therefore, the Preservation Commission recommended that the Board of Appeals impose two conditions on the Application. The first, that the property not be sub-divided so as to separate the Barn from the main house and second that the Preservation Commission not feel obligated to approve future changes in the Barn in order to accommodate a single family dwelling. While Mr. Reed's remarks were made at the time that the applications still included the creation of a separate dwelling unit rather than just guest quarters, the Board understood and appreciated the concerns of the Preservation Commission and the Historical Commission.

The next person to address the Board was Robert Daves, Town Meeting Member, Precinct 5 and the President of the Neighborhood Association. He said that he agreed with Henry Stone, the builder, that the survival of the Barn depends upon the current owners. He said the issues of concern are focused on the proposed creation of a single family dwelling in the Barn structure. He emphasized that this is their main concern and that such a use would have a negative impact on the neighborhood. Again, Mr. Daves remarks were made prior to the withdrawal of the request for a single family dwelling and so we assume that the withdrawal of the request for a single family dwelling in the Barn addresses Mr. Daves and the Neighborhood Association's concerns.

The Board also heard from Mrs. Jean Peteet, of 100 High Street, who opposed a variance for a separate dwelling house and expressed concern about what future owners might do if the variance for a separate dwelling unit was granted. She felt the potential could be for two entirely different families living on the same property, which she opposed. Next, Mrs. Cornelia

McMurtrie of 35 Hawthorne Road said that her garage is on the property line and stands 16 feet to the rear of the rear of the Barn. She opposes a single family dwelling in the Barn and she told the Board that she opposed such a use in 1974 when the issue was last brought before the Board. She has no problem with the restoration of the Barn and, in fact, is pleased with the prospect of the restoration of the Barn and its use as a museum, but she did not want to see it used for living quarters because the "luxury" of privacy which she said she has enjoyed for 35 years would "vanish". She indicated that the Barn, because of the elevation differential, looms over her property. She submitted a letter to the Board and indicated dissatisfaction with the actions of the Planning Board. Elizabeth Frost, of 82 High Street addressed the Board indicating that the North side of the subject property where the Barn is located is approximately 1.6 feet from her property line and runs along her South property line. She opposes a change of use for the Barn which she said had not previously been inhabited by humans. She applauded the Petitioners for having done a beautiful and historically respectful job of the Main House and indicated that she is appreciative of that fact. For her, she said that even without a kitchenette, that is just guest quarters without cooking facilities, Board approval would be tantamount to condoning an illegal apartment. She described the pleasant views of the various neighborhood properties from her windows, and indicated if the Barn were to be occupied even with a just a guest bedroom and a full bath, her privacy would be significantly and adversely affected. Mr. Michael Hughes, of 47 Cumberland Avenue, accompanied by his wife, Paige Williams, indicated that they have lived in the neighborhood for 3 1/2 years and they enjoy the open space. Their main point was that granting permission for a single family dwelling would create a precedent for the neighborhood, which they strongly opposed.

The next person to speak was Betsy Shure Gross, Town Meeting Member, Precinct 5 of 25 Edgehill Road. She described the neighborhood as being a great asset to the town and an architectural treasure. She indicated that the Petitioners have not yet lived in the house or not yet become part of the neighborhood and the neighborhood would like a chance to get to know them and for them to get to know the neighborhood before a determination was made on the application. Next, Diana Post, of 76 High Street explained to the Board that she was still confused about the specifics of the application. She was opposed to the single family variance and requested it be denied indicating that such a change would change the neighborhood and her house and that she would not want to see those changes occur. She further asked for a clarification of the relief being sought. Ms. Kushlefsky of 112 High Street indicated that she could see the Barn from her kitchen window. She challenged the claim that \$100,000.00 in order to maintain the structure was sufficient justification to grant the single family variance. Again, her remarks were made at the time prior to the withdrawal of the request for a single family variance. Ms. Kushlefsky did indicate that she thought there were other uses for the Barn including parking a car, but her main objection appeared to be to a kitchen facility, which she felt could in the future result in a completely separate dwelling unit. She underscored her opinion that the crux of what people seem to be objecting to were the kitchen facilities. She acknowledged that the Petitioners could have guest quarters without kitchen facilities, that a kitchen was not necessary to use the second floor solely as guest quarters.

The Board next heard from Polly Selkoe, Assistant Director for Regulatory Planning, who communicated the Planning Board Report. The Planning Board's conclusions were reflected earlier in this decision. Ms. Selkoe indicated at the time the Planning Board vote, there was a request for a variance for a separate dwelling unit, which has now been withdrawn

although the majority of the members of the Planning Board did agree that granting such a variance would provide for an economic incentive for the preservation of the building. Ms. Selkoe indicated that the Planning Board recommended approval with 4 conditions.² Those conditions are as follows:

1. Final elevations shall be submitted for review and approval to the Preservation Commission.
2. A final site plan, indicating parking spaces and driveway materials, shall be submitted for review and approval by the Assistant Director for Regulatory Planning.
3. The subject lot (Atlas Map 69, Block 295, Parcel 15) shall not be subdivided.
4. Prior to the 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) 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.

The Board next heard from Mr. Hitchcock, on behalf of the Building Commissioner. He reviewed the relief required and confirmed that the Zoning By-Law required a kitchen or cooking facilities in order to qualify a building as a dwelling unit. Since the request for cooking facilities or a kitchenette has been withdrawn, the Board understands and interprets the By-Law as not qualifying the current application as a request for a separate dwelling unit in the Barn.

The Board then heard from the Petitioners' Counsel, who attempted to clarify for the Board questions that had been raised by the Board with respect to the proposed application and the Petitioners' intentions with respect to the property. Mr. Hoffman pointed out on the Town Atlas that 82 High Street appears to be situated similarly as 92 High Street in that the lot that includes number 82 originally contained two structures, both of which became separate dwelling units, and that as a separate dwelling, number 82 is located on the property line on the North

² A fifth condition related to relief no longer being sought.

side of that parcel. Therefore the situation at 92 High Street nearly replicates the pattern at 82 High Street except that here the relief sought is more benign, a main house and an accessory structure rather than two dwellings. Mr. Hoffman pointed out that in this case, the Petitioner has agreed with a proposed condition by the Preservation Commission that unlike 82, 92 High Street would not be sub-divided and that any further changes to the Barn would be submitted to the Preservation Commission for review. Mr. Hoffman also noted that the property behind 92 High Street on Hawthorne Road was, as had been mentioned by the abutter, considerably below the grade of the Barn. But the windows in the Barn facing the abutter to the east could not likely serve as a place to look out at Hawthorne Road since the east facing windows are so called "horse" windows being very high on the façade and requiring a ladder in order for someone to look out those windows. Therefore the impact on the privacy of the abutting lot to the east is questionable since as a practical matter, no one would be looking east from the east facing windows in the Barn. Mr. Hoffman also noted, as previously described, that the amount of open space, approximately 14,000 square feet of yard, will not be altered and, in fact, will be improved and therefore any suggestion that open space would be compromised by the existence of either a dwelling unit, or, in fact, what is now being proposed, a guest quarters on the second floor containing one bedroom and a bathroom, is difficult to comprehend. The large yard will be landscaped by the Petitioners and the open space substantially preserved and improved to the great benefit of the surrounding properties. Mr. Hoffman responded to the issue of increased density. He commented that even with a separate dwelling unit in the Barn, the number of additional people would be infinitely small in the context of this neighborhood, and the occupancy by, on a temporary basis, guests in one bedroom can not conceivably impact the density of the neighborhood in any real or material respect. Mr. Hoffman indicated that the Barn

needs to be put to productive use, which respects, but is not captive to, the historic uses of the building. Use of the Barn to stable horses is not coming back in this urban neighborhood. He further indicated that the idea that a decision by the Board granting the relief requested would set a precedent is not a fair characterization of how zoning works. Real estate being unique, each case stands on its own merits and the Board is not obligated to grant similar relief to another property where conditions may be different. He further indicated that the Preservation Commission staff member, in testimony before the Planning Board, indicated that it is the Commission's policy to allow carriage houses to be converted for other uses, including dwelling uses, in order to encourage their preservation and restoration. While the Preservation Commission indicated that no conversions have yet occurred in historic districts, that doesn't mean that such a conversion is inappropriate in historic districts. However, in this case, the conversion to a separate dwelling unit is no longer being requested and the existence of a single bedroom and bathroom on the second floor in this building for temporary guest quarters as a way of creating an opportunity to use otherwise un-used space on the second floor is not unreasonable. As Mr. Hitchcock of the Building Department pointed out in his remarks, if the building is allowed to deteriorate, it will do so and eventually saddle the owners with the maintenance of a building that has no useful or practical purpose. This is, in fact, something the Preservation Commission is in business to avoid and, therefore, the Preservation Commission supported the guest quarters as a reasonable accommodation for the preservation of this structure. Mr. Hoffman suggested that some of the concerns expressed by the neighborhood, both implicitly and expressly, arise out of fear for the future and, in fact, some of the comments did express the concern that a subsequent owner could abuse the variance. In one comment, there was speculation that approval by this Board would condone an illegal apartment. While

these fears may be genuine, they are not a justification for denying the modest relief requested by the Petitioners in order to carry the enormous burden placed upon them by the historic district and the desires of the neighbors to preserve what is an iconic building. Following a colloquy between the Board and Mr. Hoffman regarding the clarification of the application, the Board closed the hearing and announced that it would take a view of the Barn at a subsequent date and then reconvene for deliberation.

The Board reconvened in the Selectmen's Hearing Room on April 5, 2007 after having visited the property and toured the Barn. The Board acknowledged that the Petitioners had withdrawn their request for a variance under Section 9.09 of the By-Law to allow a second dwelling unit in the Barn and that the relief now sought related only to excess floor area ratio for habitable space and those special permits that would permit the existing setbacks to remain as they have been for the 100 years or more that the Barn and the main house have existed on this lot. The Board interprets the Zoning By-Law as requiring cooking facilities to qualify a building as a dwelling unit and the Barn has none and none is proposed. The need for the neighborhood to feel secure that any relief we grant is not an opening for unrestrained changes to the Barn is understandable but can not form the basis of the Board's treatment of the Petition and the Petitioner's request for a reasonable use of the Barn. There are ample mechanisms in the Zoning By-Law to provide for the enforcement of any conditions to the relief granted by the Board. Moreover, the Petitioner's have, in fact, consented to the conditions sought by the Preservation Commission which we believe are more than adequate to protect and address the neighborhood concerns about future changes to the Barn. Our understanding is that the main thrust of the neighbors remarks was directed in opposition to the separate dwelling unit. The proposal before us now, however, is more benign: a single bedroom and bath for guests of the owners of the main

house. We have heard no opposition to finishing of the first floor for the main purpose of housing a collection of the owners art objects.

We begin our analysis of the application with a recognition that the Barn exists and has existed for over 100 years with two levels or pre-existing floor area. No additional floor area is being sought and thus, no additions to the existing structure are being proposed. No one wishes to do away with the Barn, nor to see it left to deteriorate. Indeed, the prior owner, Mr. Gadsby, indicated that he undertook monumental efforts himself to try and keep the Barn up, but that it was a daunting task and would be particularly daunting for any homeowner without the means to undertake the efforts described by Mr. Stone. Allowing the Barn to be used to house the owners art collection and to accommodate a guest on the second floor is about the minimum nonconformance necessary to provide relief from the regulatory burden imposed by the historic district regulations. We acknowledge that the expense, not just of restoration now, but of the ongoing need to preserve the Barn for the next 100 years justifies such departure from the floor area ratio requirements in the Zoning District. We don't believe that requiring the owner to use a fraction of the first floor for the parking of automobiles, but granting no relief from the burden for restoring and maintaining the entire building, is fair or reasonable, even were we to discount the additional costs of installing interior parking for modern automobiles and the destruction of the original flooring in doing so. M.G.L. Ch. 40A §10 sets forth the statutory requirements for the grant of a variance. It provides, in part that the variance may be granted

"with respect to particular land or *structures* a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that owing to circumstances relating to the soil conditions, shape, or topography of such land or *structures* and especially affecting such land or structures, but not affecting generally the zoning district in which it is located, a literal enforcement of the provision of the ordinance or by-law would involve substantial hardship, financial or otherwise to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good

and without nullifying or substantially derogating from the intent or purpose of such ordinance the by-law." (emphasis added).

Here the Barn is a unique *structure* given its historic status and historical value to the neighborhood as amply testified to by the Preservation Commission staff. The Barn is under the regulatory jurisdiction of the Preservation Commission and the Historic District Regulations. It can not be demolished without leave of the Preservation Commission. Moreover, it is sited on a steep hill, making restoration more difficult. The soil conditions on which it is located makes any replacement to bring the floor area ratio within allowable limits difficult, if not impossible.

Based upon the testimony, our visit to the property and tour the Barn, we do not think that the limited use of the Barn as proposed has any palpable impact on the reasonable privacy expectations of the immediate abutters. To the East, the Barn windows are at a height that without a ladder it would not be possible to see the abutting house and, even if it were possible, the abutter's garage is between the Barn and abutter's house. Moreover, most of the houses in the immediate vicinity do not enjoy seclusion. Indeed, a number of the neighbors commented that they enjoy an expansive view of the neighborhood from their own houses and such an expansive view of the properties in the surrounding area serve as an amenity rather than an intrusion on their privacy. It is true that the Barn is practically on the property line on the North side of the lot, but it is the abutter's yard it abuts and not the abutter's house. This being a built up neighborhood, with communal tennis courts abutting the property to the East at the corner of Hawthorne and Cumberland Avenues, the fact that a neighboring yard may be seen from a window on the second floor in the Barn is not violative of any reasonable expectation of privacy in this particular neighborhood. As the neighbor to the East said in her testimony, the "privacy" that she has heretofore enjoyed for the last several decades has been a "luxury." We think the

luxury she speaks of is not a condition one typically or reasonably expects to find or to which one is necessarily entitled in this area.

We find as to the Special Permits that the preservation of the Barn as a counter balancing amenity under Section 5.43 of the Zoning By-Law and that the use of the Barn for habitable space including a guest bedroom and bath on the second floor, but not as a dwelling unit is an appropriate use of the structure. It is also the fact that the structure has existed along the property line for 100 years or more without adversely affecting or raising complaints in the neighborhood. Moreover, the use as proposed will have no adverse affect on the neighborhood. It will be beneficial to the neighborhood as a result of the effort to preserve the Barn as a neighborhood asset.

Accordingly, the Board of Appeals grants a variance for excess floor area ratio and special permits under Section 5.43, waiving yard and setback requirements as necessary to keep the Barn in its current location, and a special permit under Section 8.02.2 to allow the alteration of a nonconforming structure, subject to the following conditions:

1. Final elevations shall be submitted for review and approval to the Preservation Commission.
2. A final site plan, indicating parking spaces and driveway materials, shall be submitted for review and approval by the Assistant Director for Regulatory Planning.
3. The subject lot (Atlas Map 69, Block 295, Parcel 15) shall not be subdivided.
4. Prior to the 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) 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.

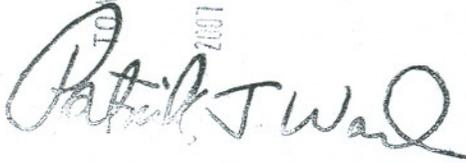
5. No additional glass area shall be allowed on the windows on the north facade of the Barn.

Unanimous Decision
Of the Board of Appeals

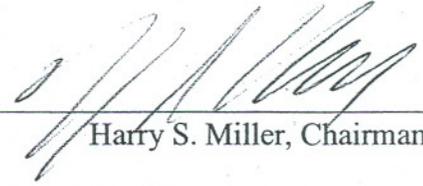
Filing Date: May 29, 2007

A True Copy:

ATTEST:



Patrick J. Ward
Board of Appeals



Harry S. Miller, Chairman

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