



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

Town of Brookline Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 080029

Petitioner, Sewall Development LLC, applied to the Building Commissioner for permission to construct a new building containing eight residential dwelling units at 109 Sewall Avenue and to construct a new basement unit at 115 Sewall Avenue thereby converting the existing residential building from 7 units to 8 units, for a proposed total of sixteen residential units on one combined lot with at grade and below grade accessory parking. The application was denied and an appeal was taken to this Board.

On June 12, 2008 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 12, 2009 at 7:00 p.m. in the Selectmen's Hearing Room, 6th floor of the Town Hall 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 February 19 and 26, 2009 in the Brookline Tab, a newspaper published in Brookline. 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: SEWALL Development LLC
Location of Premises: 109 & 115 Sewall Avenue
Date of Hearing: 3/12/2009
Time of Hearing: 7:00 p.m.
Place of Hearing: Selectmen's Hearing Room, 6th fl.

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

- 1) 4.08.4; Affordable Housing Requirements, Special Permit Required.
- 2) 5.03; Spacing of Residential Buildings on the Same Lot, Special Permit Required.
- 3) 5.05; Conversions; Special Permit Required.
- 4) 5.09.2. d; Design Review, Special Permit Required.
- 5) 5.43; Exceptions to Yard and Setback Regulations, Special Permit Required.
- 6) 5.50; Front Yard Requirements, Variance Required.
- 7) 5.60; Side Yard Requirements, Variance Required.
- 8) 5.91; Minimum Usable Open Space, Variance Required.
- 9) 6. 01.2.a; General Regulations Applying to Required Off-Street Parking Facilities, Special Permit Required.
- 10) 6.02.1; Table of Off-Street Parking Space Requirements, Variance Required.
- 11) For the Design of All Off-Street Parking Facilities
 - 6.04.2. d, Variance Required.
 - 6.04.2. g, Variance Required.
 - 6.04.4. b, Variance Required.
 - 6.04.5. b, Variance Required.
 - 6.04.12, Special Permit Required.
- 12) 8.02.2; Alteration or Extension, Special Permit Required of the Zoning By-Law to construct a new building containing eight residential dwelling units at 109 Sewall Avenue and to construct a new basement unit thereby converting from a 7 unit to an 8 unit residential building at 115 Sewall Avenue with a proposed total of sixteen residential units on one combined lot with at grade and below grade accessory parking at 109-115 SEWALL AVE BRKL.
Said Premise located in a M-1.5 and M-2.0 (Apartment House) 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.

Enid Starr

**Jesse Geller
Robert De Vries**

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr and Board Members, Jonathan Book and Rob De Vries. The petitioner was represented by their attorney, Attorney Jeffrey Allen of Denner Pellegrino, LLP, 4 Longfellow Place, 35th Floor, Boston, MA 02114.

At the hearing, Lara Curtis, Planner, distributed the Planning Board Report dated December 11, 2008. Mr. Allen then described the factual background for the petition as follows:

109-115 Sewall Avenue consists of two parcels located approximately midway on Sewall Avenue between St. Paul and Kent Streets. Currently at 115 Sewall Avenue is a 3 ½ -story multi-family dwelling that was built in 1928 with seven units. The lot at 109 Sewall Avenue is currently vacant except for a single-story multi-bay garage at the rear; the two-family Victorian that was on the lot burned down in March 2008. Surrounding properties include another Victorian at 103 Sewall Avenue, which contains 7 units and was also damaged during the fire, and a variety of three-story masonry multi-family buildings on both sides of Sewall Avenue.

The Petitioner, Sewall Development LLC, proposes to renovate and convert the existing 7-unit dwelling located 115 Sewall Avenue into an 8-unit dwelling by adding a unit in the basement. A new building would be constructed at 109 Sewall Avenue with 8 units, for a proposed total of 16 residential units on one combined lot. The new building at 109 Sewall Avenue would be connected by a fire wall, but there would be no direct access between the two buildings.

The 109 Sewall Avenue building would be four stories tall and consist of 17,085 square foot with three units on the first floor, two units each on the second and third floors, and one unit on the fourth floor. Two of the units on the first floor would be affordable. The building's main entrance would be located on the front façade of the building and another entrance would be located on the

interior side of the building near 115 Sewall Avenue. An egress-only door would be located on the other side of the building next to the driveway. The front entrance would have an accessible ramp. The new building at 109 Sewall Avenue would be finished primarily with brick, and with copper-colored aluminum panels at the fourth floor and on the rear bay. The fourth floor would be setback allowing for a porch and an infinity pool on the third floor.

The exterior alterations for 115 Sewall Avenue are minor, and include the installation of new windows. The building would have two units on each floor, including two in the basement for a total of 8 units.

The entire building at 109 Sewall Avenue would be set back from the alignment of 115 Sewall Avenue allowing for visible green space, which was requested by neighbors of the building. This would leave a significant portion of the side façade of 115 Sewall Avenue exposed, which is an existing condition.

The driveway on the side of 109 Sewall Avenue would lead to parking spaces for both buildings: 7 spaces in the existing garage at the rear, 9 open air spaces (including two accessible) behind the buildings; and 16 spaces in an underground garage beneath 109 Sewall Avenue. The garage would also have a small room for trash containers.

Mr. Allen reviewed the zoning relief necessary for this project to go forward. The zoning relief required is:

Section 4.08.4 - Affordable Housing Requirements: A special permit is required for the development of affordable housing units in any project that results in the creation of six or more dwelling units. In accordance with **Section 4.08**, the developer is required to provide 15 percent of the new units containing 15 percent of the bedrooms as affordable, or in the alternative, a cash payment. In support of this special permit, Petitioner has proposed a two-bedroom unit and a one-bedroom unit. Although this

does not strictly comply with the bylaws, this is a more expensive proposition than providing a cash payment. In addition, the Housing Advisory Board prefers the Petitioner's proposition to make two units affordable over the alternative cash payment.

Section 5.03 - Spacing of Residential Buildings on the Same Lot: A special permit is required where a building is proposed to be constructed on a property where there is an existing residential building and the yard dimension requirements in **Section 5.04** are not met. The Board of Appeals may by special permit modify the yard dimensions between such buildings designed and intended to remain under the same ownership and management. The petitioner believes that this special permit should be issued because the buildings will remain under the same ownership and management.

Section 5.05 – Conversions: When a structure is converted to create additional dwelling units, the structure shall conform to all dimensional requirements specified in **Section 5.01**. The Board of Appeals may by special permit waive any of the dimensional requirements except minimum lot size, provided that no previously existing nonconformity is increased. The structure at 115 Sewall Avenue is being converted to create an additional dwelling unit in the basement, but the structure does not currently conform to front and side yard setback requirements. The Special Permit should be granted because there are no structural or exterior alterations to 115 Sewall Avenue.

Section 5.09.2.d — Design Review: Multiple dwellings with four or more units on the premises require a special permit subject to the design review standards listed under **Section 5.09.4(a-1)**. The applicant has submitted a Community and Environmental Impact Statement. The most relevant sections of the design review standards are described below:

- ***Preservation of Trees and Landscape:*** Currently the site at 109 Sewall Avenue is cleared of landscaping and structures, except for the garage at the rear, and very little cultivated vegetation is on site. The rear of 115 Sewall Avenue would be used partially for parking, and the rest for usable open space.
- ***Relation of Buildings to Environment:*** The proposed site is relatively flat and devoid of

significant landscaping. The underground garage would be mostly below grade, and the building will be set back significantly from the front lot line to allow for visible landscaping in the front yard. On-grade open-air parking will be located to the rear of both buildings, and a small amount of usable open space will be located directly behind 115 Sewall Avenue.

- ***Relation of Buildings to the Form of the Streetscape and Neighborhood:*** The proposed building's front yard alignment has been modified in response to neighbors' concerns to allow for a significant amount of green space in front of the building. The Victorian building's alignment prior to burning down was significantly set back from the street, and the applicant is attempting to provide significant landscaping in the front yard. Therefore, the proposed building's front yard would be approximately 10 feet deeper than required. The new building would be partially attached to 115 Sewall Avenue by a fire wall; the building at 115 Sewall Avenue is closer to the street, leaving much of that side wall exposed, which is the current situation. The new building would be somewhat taller than 11.5 Sewall Avenue, but with the same number of floors. The new building would also be taller than 103 Sewall Avenue. There is not one consistent building type along Sewall Avenue, and the proposed building attempts to incorporate details of 115 Sewall Avenue while still maintaining a contemporary appearance.
- ***Open Space:*** The proposal meets the requirements for landscaping and usable open space. Usable open space is located both in front of 109 Sewall Avenue and behind 115 Sewall Avenue.
- ***Circulation:*** The proposed building will have two entrances, one main entrance along the front facade and another entrance on the building's interior side, and one egress-only door along the building's other side facade near the driveway. The egress-only door is in response to neighbors' concerns regarding too much activity in the building's side yard. The driveway width is slightly smaller than what is required, as is the maneuvering aisle for the above-ground garage spaces, but the parking facilities are not expected to be less usable as a result.
- ***Stormwater Drainage:*** The petitioner has not yet submitted a drainage plan, although this should be of some concern due to the addition of significant paved area. A drainage plan should be submitted prior to the issuance of any building permits to ensure all drainage is adequately addressed.
- ***Energy Efficiency:*** During the Design Group process, the applicant indicated intentions to possibly apply for LEED certification for the new building.

Section 5.50 — Front Yard Requirements:

Section 5.60 — Side Yard Requirements:

Section 5.91 — Minimum Usable Open Space:

Section 6.01.2.a — General Regulations Applying to Required Off-Street Parking Facilities:

In M Districts, when a structure is converted for one or more additional dwelling units, parking requirements for the entire structure shall be provided. However, the Board of Appeals may by special permit waive up to one half of the required parking spaces.

Section 6.02.1 — Table of Off-Street Parking Space Requirements:

Section 6.04 — Design of All Off-Street Parking Facilities:

- .2.d: Minimum width of aisles
- .2.g: Handicapped accessible parking requirements
- .4.b: Entrance and exit drive width
- .5.b: Driveway side yard setback

Section 8.02.2 — Alteration or Extension: A special permit is required to alter or extend a nonconforming structure.

115 Sewall Avenue (Existing Building).	Required	Existing	Proposed	Finding
Front yard setback	19.1 feet (15+H/10)	10 feet	10 feet	Special permit*
Side yard setback	14 feet	0 feet	0 feet	Special permit*
Rear yard setback	30 feet minimum	90 feet	90 feet	Complies
Floor area ratio	2.0 (30,230 s.f.)	1.36 (20,602 s.f.)	1.44 (21,752 s.f.)	Complies
Height	50 feet	41.75 feet	41.75 feet	Complies

*Under **Section 5.05, Conversions**, the Board of Appeals may waive by special permit any dimensional requirements except for minimum lot size when a dwelling in an M district is converted to create additional units.

109 Sewall Avenue (Proposed Building).	Required	Existing	Proposed	Finding
Front yard setback	20 feet	n/a	27 feet	Complies
Side yard setback	24.8 feet	n/a	30.16 feet (right) 0 feet (left)	Complies Special Permit**
Rear yard setback	30 feet	n/a	47.4 feet	Complies
Floor area ratio	1.5 (21,013 s.f.)	n/a	1.22 (17,085 s.f.)	Complies
Height	50 feet	n/a	49 feet	Complies

Under **Section 5.43, the Board of Appeals may waive by special permit yard and setback requirements in return for the provision of counterbalancing amenities or by increasing the depth or area of another yard or setback.

Parking	Required	Proposed	Finding
Driveway width	20 feet	18 feet	Special permit*
Driveway setback	5 feet	1 foot 10 inches	Special permit**
Maneuvering Aisle	23 feet	20 feet 10 inches	Special permit*
Parking spaces	36 spaces	32 spaces	Special permit***

*Under Section 6.04.12, the Board of Appeals may allow by special permit the substitution of other dimensional requirements where new parking facilities are being installed to serve existing structures.

** Under Section 5.43, the Board of Appeals may waive by special permit yard and setback requirements in return for the provision of counterbalancing amenities or by increasing the depth or area of another yard or setback.

*** Under Section 6.0 1 .2.a, the Board of Appeals may by special permit waive up to half of required parking spaces when an existing building (115 Sewall Avenue) is converted for one or more additional dwelling units. Additionally, under Section 6.02.2.d, the Board of Appeals may allow the number of spaces for affordable housing under Section 4.08 to be reduced. If these two sections are applied, reducing the requirements of 115 Sewall Avenue by half and requiring only one parking space per each affordable unit, the number of required spaces (with relief) would be 25.

Open Space	Required	Proposed	Finding
Landscaped Open Use	4661 s.f.	5538 s.f.	Complies
Useable Open Space	4738 s.f.	5852 s.f.	Complies

The Chairwoman asked if there were anyone present in opposition or in favor of this proposal. Several neighbors expressed their opinion on the proposal. The neighbors were not clearly in favor or opposed to the proposal, but they did express their desire for a smaller building at 109 Sewall Avenue but appreciated the evolution of the design of the building through the design review process.

The Board then heard from Lara Curtis, who advised that the Planning Board was not opposed to the proposal to convert the building at 115 Sewall Avenue from a seven-unit dwelling to an eight-unit dwelling and construct a new eight-unit dwelling at 109 Sewall Avenue. The design of the building has been extensively revised in response to comments from neighbors and the appointed Design Advisory Group. The building is substantially below the maximum allowed FAR, provides sufficient parking for a building located close to public transit, and meets requirements

for usable and landscaped open space. The Planning Board was also pleased to see the provision for affordable units on site.

The new building largely complies with setback requirements, and fencing and landscaping should help lessen visual impacts on the streetscape. The Planning Board would like the applicant to consider landscaping treatments for the driveway and abutting garage wall that will soften that edge, and the applicant should work with the owners of 103 Sewall Avenue on appropriate fencing, including a green fence, along the lot line to provide adequate privacy. The building's exterior has been designed to be contemporary, but its alignment takes into consideration the previous Victorian building's location, and the finishes are substantial and should age well.

Some aspects of the proposal remain unclear and should be addressed prior to issuance of a building permit. These include details regarding lighting, drainage, and trash storage, as well as an updated landscaping plan. These details should be resolved and indicated on appropriate plans and approved by the Planning Board prior to issuance of a building permit. Additionally, a construction management plan should be developed, including emergency contact numbers, so that the construction process is responsive to neighborhood concern.

Walter White, Deputy Building Commissioner, delivered the report of the Building Department. He said that the process for this project had been long and extremely thorough. Ample opportunity has been given to address neighborhood concerns. Accessibility issues in the proposal appear to be compliant. Mr. White said that the Building Department was in support of the proposal, the relief required, and the conditions proposed by the Planning Department.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable and there are grounds to grant the Special Permits under Sections 4.08.4,

5.03, 5.05, 5.09.2.d, 5.50, 5.60, 5.91, 6.01.2.a, 6.02.1, 6.04, and 8.02.2 of the Zoning By-law and makes the following findings pursuant to Section 9.05 of the Zoning By-law:

1. The specific site is an appropriate location for such a use, structure or condition.
2. The use as developed will not adversely affect the neighborhood and, in fact, will provide additional affordable housing.
3. There will be no nuisance or serious hazard to vehicles or pedestrians.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The development as proposed will not have any adverse effect on the supply of housing available for low and moderate income people, and will in fact increase it.

Accordingly, the Board grants Special permits pursuant to Sections 4.08.4, 5.03, 5.05, 5.09.2.d, 5.50, 5.60, 5.91, 6.01.2.a, 6.02.1, 6.04, and 8.02.2 of the By-Law subject to those conditions set forth below.

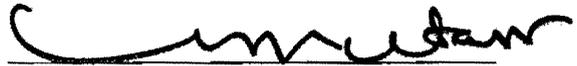
1. **Prior to the issuance of a building permit, final plans for 109 Sewall Avenue, indicating façade design colors, materials, windows, rooftop details, walls, and placement of utilities for HVAC and transformers, shall be submitted for the review and approval of the Planning Board. There shall also be an onsite mock-up regarding the brick, windows, and window trim.**
2. **Prior to the issuance of a building permit, final site and landscaping plans for the entire land parcel, indicating site design, landscaping, fencing, lighting, drainage details, and garage or surface parking, shall be submitted for the review and approval of the Planning Board.**
3. **Pursuant to the provisions of *Section 4.08* of the Zoning By-law, the applicant shall provide, as affordable, 15 percent of 9 new units containing 15 percent of 25 bedrooms, except that the units currently identified as "1 Bedroom Unit" and "2 Bedroom Unit" on the *First Floor Plan* in "109 Sewall Ave, Brookline, MA, December 11, 2008" with a total of three bedrooms are an acceptable substitution, provided that**
 - a. **no building permit is issued until the applicant has submitted, and the Director of Planning and Community Development has approved, a final Affordable Housing Plan, which shall include a final schedule of units and references to final floor plans for the affordable units, which Plan shall be legally binding as part of this special permit;**
 - b. **finishes and appliances are the same as market rate units, except where the Director of Planning and Community Development specifically approves, in advance, a request for finishes or appliances that differ;**

- c. **the units qualify as low and moderate income housing under the Comprehensive Permit Law (Chapter 40B), including that they shall be sold to households with incomes less than or equal to 80 percent of area median income;**
 - d. **sales prices are established such that a hypothetical household with 1 person more than the number of bedrooms in the unit, with an income set at 10 percentage points less than the applicable income limit would be paying 30 percent of gross income toward mortgage, mortgage insurance, condominium fee and property taxes for a standard thirty-year fixed interest mortgage at 95 percent of sales price;**
 - e. **each affordable unit is sold with the exclusive use of one parking space;**
 - f. **no certificate of occupancy is issued for any market rate unit until:**
 - i. **the Town has approved initial sales prices for the affordable units, condominium documents, and a marketing and selection plan for the affordable units which provides that priority, as permitted by law or regulation (including Chapter 40B guidelines, for the affordable housing units) to Brookline residents, employees of the Town and the Brookline Housing Authority, and families with children in Brookline METCO program, and**
 - ii. **both affordable units have obtained a certificate of occupancy, unless otherwise approved by the Director of Planning and Community Development; and**
 - g. **the affordable units are subject to a restrictive covenant to the Town of Brookline, permanently controlling the resale price and process for such units.**
4. **Prior to the issuance of a building permit, a construction management plan, including parking locations for construction vehicles, location of portable toilets, and a rodent control plan, shall be submitted for review and approval by the Transportation Director, with a copy of the approved plan submitted to the Planning Department and posted on the Planning Department's website.**
 5. **One temporary construction and/or development sign, no greater-than 20 square feet, may be erected on site during the construction and initial sale period, with the design subject to the review and approval of the Assistant Director for Regulatory Planning.**
 6. **A certified as built foundation plan, to ensure conformance to the Board of Appeals decision, shall be submitted to the Building Commissioner for review and approval before the balance of the building permit shall issue.**
 7. **Prior to the issuance of a building permit, the applicant shall submit to the**

Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered engineer or land surveyor, including landscaping, fencing, grading, and location of utilities; 2) building elevations for 109 Sewall Avenue, stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

8. The two lots that constitute the property at 109-115 Sewall Avenue shall have common ownership.

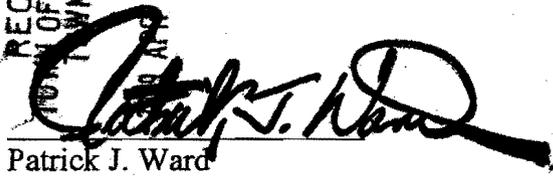
Unanimous Decision of
The Board of Appeals



Enid Starr, Chairman

Filing Date: April 16, 2009

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