



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

Town of Brookline

Massachusetts

Town Hall, 1st Floor
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Patrick J. Ward, Clerk

**TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2010-0014**

Petitioner, SLD 1803 Beacon Street, LLC, applied to the Building Commissioner for permission to enlarge an existing first floor apartment at 1803 Beacon Street. The application was denied and an appeal was taken to this Board.

On April 8, 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 June 17, 2010 at 7:00 p.m. in the Selectmen's Hearing Room, 6th floor, Town Hall, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to the 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 May 27 and 3 June, 2010 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

**LEGAL NOTICE
TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEAL
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: SLD 1803 Beacon Street, LLC

Owner: SLD 1803 Beacon Street, LLC

Location of Premises: 1803 Beacon Street

Date of Hearing: June 17, 2010

Time of Hearing: 7:00 p.m.

Place of Hearing: Selectmen's Hearing Room, 6th floor

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

1. 5.09.2.a; Design Review, within 100' of Beacon St., Special Permit Required.
2. 5.09.2.d; Design Review, multiple dwellings, Special Permit Required.
3. 5.20; Floor Area Ratio; Variance Required.
4. 5.22.3.b.2; Exceptions to Maximum Floor Area Ratio Regulations for Residential Units, Special Permit Required.
5. 5.43; Exceptions to Yard and Setback Regulations, Special Permit Required.
6. 5.60; Side Yard Requirements; Variance Required.
7. 5.70; Rear Yard Requirements; Variance Required.
8. 5.90; Minimum Landscaped Open Space; Variance Required.
9. 5.91; Minimum Usable Open Space; Variance Required.
10. 8.02.2; Alteration or Extension; Special Permit Required.

of the Zoning By-Law to add and renovate first floor apt. per plans at 1803 BEACON ST BRKL.

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 Chair, Enid Starr and Board Members, Mark Zuroff and Jonathan Book. The petitioner, was represented by Attorney Robert Allen of 300 Washington Street, Brookline, MA.

Mr. Allen described the subject property at 1803 Beacon Street as a three-story brick corner row house located on the south side of Beacon Street near Cleveland Circle. The building contains four residential units and was constructed around 1900. The front façade of the building features stone detailing, an arched entrance and a central rounded bay window. A common walkway provides parking in the rear of the building, and there is a pedestrian path to the side of the property that connects Beacon Street with the Waldstein Playground. The pedestrian path causes the petitioner's lot to be smaller than all the other buildings within the block creating a uniqueness to the subject property as it has a greater depth and lesser width, thus the rear porches are smaller in size than all other buildings within the block. The entire rear yard is paved with gravel to provide for parking, and each unit with exception to the basement unit has a rear deck. Surrounding properties are similar in appearance and use, with exception to the Waldstein Playground, which is the rear abutter.

Mr. Allen said that his client, SLD 1803 Beacon Street LLC, is proposing to finish 873 s.f. of floor area in the basement for the use of the existing 617 s.f. basement apartment. The new floor area in the basement will result in an additional bedroom and a larger living room and kitchen in the unit. The remaining 122 s.f. of unfinished floor area in the basement will be devoted to mechanical equipment. The applicant is also proposing to construct a new private entrance on the front façade of the building for the basement unit. As the basement is nearly entirely below grade in the front yard, the applicant is proposing to construct a deep set of stairs to allow for access. Finally, the petitioner is also proposing to construct a patio in the rear yard.

Mr. Allen stated that he believed his clients needed relief under Section 5.22.3.b.2. He said that the Board of Appeals may grant a special permit for an increase in floor area that is less than or equal to 120% of the permitted gross floor area in a M-1.5 district. Also under Section 5.43, the Board of Appeals may substitute other dimensional requirements for required yards and setbacks when counterbalancing amenities are provided. Mr. Allen said the counterbalancing amenities would be to improve the conditions in the rear of the property by repaving their parking area and the parking area at 1805 Beacon Street as well as providing drainage. Also relief is required under Section 8.02.2, alteration to a pre-existing, non-conforming structure. Attorney Allen opined that the Board of Appeals could apply section 5.43 to the dimensional requirements for the decks to contribute towards usable open space.

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

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

Section 5.09.2.a, d – Design Review: Exterior additions and alterations to structures on Beacon Street and to multiple dwellings with four or more units require a *special permit*, subject to the Community and Environmental Impact and Design Standards of Section 5.09. The standards relative to this application are as follows:

Preservation of Trees and Landscape:

As the scope of the work for this proposal is almost entirely on the interior of the building, it does not appear a substantial amount of landscaping should be disturbed. However, the proposed front entry and stair may result in the loss of an existing line of shrubs that are perpendicular to the street.

Relation of Buildings to the Form of the Streetscape and Neighborhood:

The neighboring property at 1805 Beacon Street has an identical entrance to the entrance that is being proposed by the applicant. However, 1805 Beacon Street is the only property on the block that has a private entrance for the basement unit on the front façade.

Open Space:

The existing site has very limited open space. The applicant will be installing a new rear patio underneath the existing decks which should enhance the functionality of the space behind the building, but will not be sufficient to meet the required amount of open space for the site.

Section 5.20 – Floor Area Ratio

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear Yard Requirements

Section 5.90 – Minimum Landscaped Open Space

Section 5.91 – Minimum Usable Open Space: The minimum usable open space requirement is dependent upon the building’s gross floor area. Since this proposal would add floor area to the building, the minimum usable open space requirement is increased. Currently there is no usable open space on site, however, the site is adjacent to the Waldstein Playground.

	Required	Existing	Proposed	Finding
Floor Area Ratio (% of allowed)	1.5 100%	1.46 97%	1.69 112%	Special Permit*
Floor Area (s.f.)	5,620	5,543	6,326	
Side Yard Setback	4.75'	0'	0'	Pre-Existing Non-Conforming
Rear Yard Setback	30'	Est. 38'	Est. 38'	Complies
Landscaped Open Space	10% 632.6 s.f.	11% 1,402.4 s.f.	23% 1506.4	Complies
Usable Open Space	15% 948.9 s.f.	0	0	Variance**

* Under Section 5.22.3.b.2, the Board of Appeals may grant a special permit for an increase in floor area that is less than or equal to 120% of the permitted gross floor area in a M-1.5 district.

**Under Section 5.43, the Board of Appeals may substitute other dimensional requirements for required yards and setbacks when counterbalancing amenities are provided. Should the Board of Appeals be willing to apply section 5.43 to the dimensional requirements for the decks to contribute towards usable open space, the applicant is proposing to improve conditions in the rear of the property by repaving their parking area and the parking area at 1805 Beacon Street as well as provide drainage as a counterbalancing amenity.

Section 8.02.2 – Alterations or Extensions: A *special permit* is required to alter or extend a non-conforming structure.

Ms. Synowiec reported that the Planning Board was supportive of this proposal. As there is an existing unit in the basement, the alteration from a one bedroom unit to a more spacious two bedroom unit should not have a significant impact on the neighborhood. As the applicant is proposing to make alterations to the site including a new patio, walkway and paving the parking the areas for their property and the neighboring property, it appears this proposal will be an improvement to the existing conditions of the property. The Planning Board noted that this

property is located adjacent to a walkway that provides direct access to the Waldstein Playground and believes that while the applicant is unable to provide adequate open space on site, the adjacency to a large open space makes the condition somewhat less pronounced. Finally, while the Planning Board had voiced some concerns about the proliferation of private entrances for basement units on the front façade, as the identical condition exists next door and is landscaped in such a way that is barely visible, it appears the applicant can likely replicate those conditions on this site. Therefore, she said, should the Board of Appeals find the application meets the requirements for a variance, the Planning Board recommends approval of the plans by David Brown Architectural Design, dated 5/18/10, subject to the following conditions:

1. Prior to the issuance of a building permit, final plans and elevations shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, a final landscaping plan, indicating a new patio in the rear yard, landscaping in the front yard as well as the location of refuse receptacles, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to the issuance of a certificate of occupancy, the applicant shall repave and stripe the driveway and parking areas at 1803 Beacon Street and 1805 Beacon Street as part of the counterbalancing amenities they are providing (should they be required).
4. 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; 2) final elevations, stamped and signed by a registered architect or engineer; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chair then called upon the Building Commissioner to deliver the comments of the Building Department. Mr. Shepard noted that the petitioner is renovating the entire building at 1803 Beacon Street. He said that the entire building had been gutted, new mechanical and electrical systems as well as a full sprinkler system was installed. Insulation was provided to code and new windows were installed to replicate the old. Mr. Shepard reported that the petitioner is doing a first rate job

on the renovation and expects the same on the first floor. Addressing the suggested conditions particularly #3 Mr. Shepard noted that he would recommend that the Board require the petitioner to submit and receive an approved drainage plan before parking area improvements are undertaken. Mr. Shepard stated that the Building Department is supportive of the proposal as well as the conditions suggested by the Planning Board.

The Board, having heard all the testimony, deliberated on the merits of the application. Board Member Zuroff suggested that a condition be imposed that the petitioner not enclose the existing porches on the floors 1-3, and requested the petitioner's opinion. Mr. Allen, after consulting with Petitioners, said that they did not intend to enclose these porches. Mr. Book agreed with Mr. Zuroff and further supported the Building Commissioner's suggestion requiring that the petitioner receive an approved drainage plan from the Town's engineering department prior to improving the parking area. Chairman Starr stated that based on the uniqueness of the structure and lot shape, the petitioner had met the requirements necessary to grant a variance but felt that the Board of Appeals could grant a special permit by applying section 5.43 to the dimensional requirements for the decks to contribute towards usable open space.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant special permits in accordance with Sections 5.22.3.b.2, 5.43, and 8.02.2 of the Zoning By-law and made the following findings pursuant to Section 9.05:

- 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.

f. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

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

1. Prior to the issuance of a building permit, final plans and elevations shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
2. Prior to the issuance of a building permit, a final landscaping plan, indicating a new patio in the rear yard, agreement that the porches shall never be enclosed, landscaping in the front yard as well as the location of refuse receptacles, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.
3. Prior to the issuance of a certificate of occupancy, the applicant shall repave and stripe the driveway and parking areas at 1803 Beacon Street and 1805 Beacon Street as part of the counter balancing amenities they are providing. Prior to implementation of the proposed parking area improvements, the petitioner shall present a drainage plan to the Director of Engineering for review and approval.
4. 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; 2) final elevations, stamped and signed by a registered architect or engineer; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

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TOWN CLERK

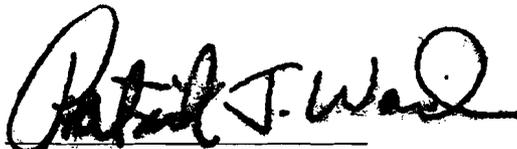
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Filing Date: July 13, 2010



Enid Starr, Chairman

A True Copy
ATTEST:



Patrick J. Ward

• Clerk, Board of Appeals