



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. 2010-0028**

Petitioners Michael Durand and Alan Litchfield, representatives of 70 Sewall LLC, applied to the Building Commissioner for permission to re-locate the existing house on the same lot at 70 Sewall Avenue, and to construct an addition for a total of seven (7) residential dwelling units per plans. The application was denied and an appeal was taken to this Board.

On 9 July 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 29 July 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 15 and 22 July 2010 in the Brookline Tab, a newspaper published in Brookline. A 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:

Petitioners: **70 Sewall LLC**
Owner: **70 Sewall LLC**
Location of Premises: **70 SEWALL AVE**
Date of Hearing: **July 29, 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. **5.05; Conversions, special permit required.**
2. **5.09.2.d; Design Review, special permit required.**
3. **5.43; Exceptions to Yard and Setback Regulations, special permit required.**
4. **5.50; Front Yard Requirements, variance required.**
5. **5.60; Side Yard requirements, variance required.**
6. **5.70; Rear Yard Requirements, variance required.**
7. **5.91; Minimum Usable Open Space, variance required.**
8. **6.02.1 Off-Street parking Regulations, variance required.**
9. **6.04; Design of All Off-Street Parking Facilities:**
 - 6.04.2.d; **Aisle width, variance required.**
 - 6.04.2.e; **Compact spaces, special permit required.**
 - 6.04.3, **Tandem parking, special permit required.**
 - 6.04.4.b; **Width if entrance and exit drives, variance required.**
 - 6.04.5.b; **Driveway setback, variance required.**
 - 6.04.12; **Dimensional relief for new parking facilities to serve existing uses, special permit required.**
10. **8.02.2; Alteration or Extension, special permit required.**

Of the Zoning By-Law to **PROPOSED ADDITION REQUIRING ZONING RELIEF at 70 SEWALL AVE BRKL.**

Said Premises are located in a SC-10 (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, Lisa Serafin and Christopher Hussey. The petitioner was represented by Scott C. Gladstone, Attorney at Law, 1244 Boylston Street, Suite 200, Chestnut Hill, MA 02467 and Peter Quinn of Peter Quinn Architects LLC, 1955 Massachusetts Avenue, Suite 4, Cambridge, MA 02140.

At the hearing, Polly Selkoe, Assistant Director for Regulatory Planning, distributed the Planning Board Report dated 23 July 2010. Both in his written submission and in his oral presentation, Mr. Gladstone described the factual background for the petition, the site & neighborhood and Applicant's proposal as follows:

Initially, the developers applied for a permit to demolish the building in order to construct a new seven unit residential building. The Preservation Commission, on 2/9/10, found the building to be architecturally significant and imposed a one year stay.

The Planning and Community Development Department urged the developers to consider saving the building and provided information about 99 Winchester Street, where an addition was constructed on the rear of this Victorian building, after moving it toward the street. The developers agreed to consider this idea and subsequently applied to construct a rear addition and to voluntarily, as this was not a major impact project, work with a design group on the massing and details of the new structure.

The Design Group, appointed by the Planning Board, included Linda Hamlin (Planning Board), David King (Preservation Commission), and Derrick Choi (neighborhood representative and abutter) and met three times on May 5th, June 3rd and June 17th. As a consequence of these meetings, the development team made several design changes, including a reduction in the massing of the addition and an increase in the site's open space and in the setback from the rear and front lot lines.

On 10 June, 2010, a building permit (and later a certificate of occupancy) was issued to install interior partitions and required egress to convert existing lodging house to a two family structure. The developers state that they will seek to rent the two units until such time as they commence construction of the approved development project.

Mr. Gladstone described 70 Sewall Avenue as a three-story wood frame residential structure of approximately 6,680-SF, which was most recently used as a lodging house. The front portion of the building, constructed in the 1800's by architect Julius A. Schweinfurt, is a mixture of Queen Anne and Shingle style. A rear ell was constructed at a later date and although detailed in a manner similar to the main building, sits on a concrete foundation and has a modern fit-out.

The site is planted with a mature landscape of maple and oak trees and one prominent tree is in the front yard to the right of the house. Numerous volunteer trees share the property boundary with neighboring lots. Other plantings are mature shrubs and lawn.

The site lies within the M-1.5 Zoning District. The locus is surrounded by 64 Sewall to the west, a five story residence building built in 2002; 76 Sewall Ave and 150 St. Paul St. (St. Paul Arms) to the east, a new five story apartment building built in 2008 and a renovated three story residential building; 1265 Beacon St. to the north (the Atrium Condominium), a ten story residence building

built in 1984; and across the street, to the south, 50-60 Longwood Avenue Condominiums, an 11 story residence building built in 1975.

Mr. Gladstone said that his client, 70 Sewall LLC, is proposing to move the existing building toward the street, approximately 16 feet, and remove the rear ell of the building to allow room for a rear addition in similar size and massing as the existing building. Two dormers on the back side walls will be removed and re-built in the same architectural style, and three chimneys will be removed, with one rebuilt at the request of the Design Group. The front porch will be rebuilt to reflect the prior circular porch but will have less depth in order to minimize the encroachment into the front yard setback. On the existing building, the turret, roof brackets, window variation, and exterior detail will be preserved, and the circular porch will be replicated, although with a shallower depth. A deck and railing above the front porch, which was initially proposed, has been eliminated at the request of the Design Group and neighbors.

The addition will be four-stories with a pitched roof that is four feet below the allowed height limit. Proposed materials for the addition are: fiber-cement shingles and stucco on the walls; wood railings on the balconies; wood clad windows; and architectural grade asphalt shingle on the roof.

Ten parking spaces will be provided at grade in the first floor of the new structure and will be accessed at the end of the driveway. The building entrance will be on the side of the building, at the juncture of the existing and new buildings and will be accessed via a brick walkway.

The Building Commissioner determined that the nature of and amount of the revisions to the existing structure no longer implicate the demolition by law, so that the demolition stay issued by the Preservation Commission based on the original proposal to take down the entirety of the existing structure was no longer applicable.

The Board considered an email from Derrick Choi representing that a large group of the affected neighbors had met and a majority found the current proposal to be acceptable. The Board further considered a letter from eight condo owners at 1265 Beacon Street, the rear abutting property, expressing their support for the current proposal.

The Chairperson inquired if any members of the public wished to be heard in regard to the matter being heard by the Board. The assembled neighbors were generally supportive of the proposed design as it represented a compromise forged over the course of several meetings over two months.

Polly Selkoe delivered the comments of the Planning Staff.

Section 5.05 – Conversions: When a structure is converted to create additional dwelling units, the structure shall conform to all dimensional requirements specified in §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 70 Sewall Avenue is being converted to create five additional dwelling units, for a total of seven units.

Special permit relief is required for front, side and rear yard setbacks, minimum usable open space, and garage parking dimensions.

Section 5.50 – Front Yard Requirements

Section 5.60 – Side Yard Requirements

Section 5.70 – Rear 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.e: Compact Spaces

- .3: Tandem parking
- .4.b: Entrance and exit drive width
- .5.b: Driveway side yard setback
- .12: Dimensional relief for new parking facilities to serve existing uses

70 Sewall Avenue (Existing Building)	Required/Allowed	Existing	Proposed	Finding
Front yard setback	19.6 feet (15+H/10)	33 feet	17 feet	<u>Special permit*</u>
Side yard setback (left)	20.15 feet (10+L/10)	11.9 feet	Unchanged	<u>Special permit*</u>
Side yard setback (right)	20.8 feet (10+L/10)	23 feet	Unchanged	<u>Complies</u>
Floor area ratio	1.5 (15,669 s.f.)	.64 (6,680 s.f.)	.52 (5,480 s.f.)	<u>Complies</u>
Height	50 feet	41' ±	Unchanged	<u>Complies</u>

70 Sewall Avenue (Proposed Building)	Required/Allowed	Proposed	Finding
Front yard setback	19.6 feet	17 feet	<u>Special permit*</u>
Side yard setback (left)	15.33 feet*** (10+L/10)	10 feet 1 st -3 rd 13 feet 4 th	<u>Special permit*</u>
Side yard setback (right)	13.7 feet*** (10+L/10)	5.9 feet	<u>Special permit*</u>
Rear yard setback For revised plans	10.15' nearer part 1 14.7' nearer part 2 15.25' nearer part 1	8.9 feet aver. 15.7' aver 18.9' aver	<u>Special permit*</u>
Floor area ratio	1.5 (15,669 s.f.)	1.43 (15,039 s.f.)	<u>Complies</u>
Height	50 feet	45 feet 11 inches	<u>Complies</u>

*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 and/or 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.

Parking	Required	Proposed	Finding
Driveway width	20 feet	10' feet at narrowest	Special permit*†
Driveway setback	5 feet	.75 foot	Special permit*
Maneuvering Aisle	23 feet	20 feet	Special permit*†
Parking spaces	16 spaces	13 [10] spaces	Special permit*†

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

† 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 6.01.2.a**, the Board of Appeals may by special permit waive up to half of required parking spaces when an existing building is converted for one or more additional dwelling units.

Open Space	Required	Proposed	Finding
Landscaped Open Space	1,500 s.f.	3,208 s.f. [2,268sf]	Complies
Usable Open Space	2,250 s.f.	245-s.f. ground [1,545 s.f.]	Special permit*

*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 and/or 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.

Section 8.02.2 – Alteration or Extension: A special permit is required to alter or extend a non-conforming structure. This was originally an issue when the existing structure was a lodging house, but it is no longer relevant as the existing structure has now reverted to being a two-family as it was before becoming a lodging house.

Ms. Selkoe reported that at its 15 July 2010 meeting, the Planning Board was unanimous in their support of preserving this architecturally significant Queen Anne building; however, they were split on supporting the rear addition as proposed, because of its size and minimal rear yard setback. The applicant returned to the Planning Board the following week with a revised proposal that jogged almost half of the addition back from the rear lot line and decreased the parking under the building

by eliminating three tandem spaces. Not only does the new plan provide more light and air to the rear apartment building, it also provides more usable green open space on the site.

The Planning Board, now in complete support of this proposal found that to preserve the building and construct a rear addition would be of greater benefit to the Town, than having it demolished and replaced with a new building. Although the relief necessary for a new building would be less, the result would be a dramatically changed appearance of the streetscape. Even though this is not a Major Impact Project, the developer willingly (and voluntarily) met three times with a design advisory group and incorporated many of the suggestions made by it and the neighbors; with the latest revisions, neighbors who attended the July 22, 2010 Planning Board meeting expressed their support for this project. A list of the numerous design changes made throughout the design group and Planning Board meetings was submitted.

Ms. Selkoe said that the Planning Board voted (7-0) to recommend approval of the revised proposal and plans, prepared by Peter Quinn Architects and last dated July 22, 2010, subject to the following conditions:

1. Prior to the issuance of a building permit, final plans, 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.
2. Prior to the issuance of a building permit, final site and landscaping plans, indicating site design, landscaping, fencing, lighting, drainage details, garage parking layout, and limited landscaping on the rear abutting property at 1265 Beacon Street, if agreed to by the 1265 Beacon Street Condominium Association, shall be submitted for the review and approval of the Assistant Director for Regulatory Planning.
3. The transformer shall be located in the basement or in an underground vault, subject to the review and approval of the Assistant Director for Regulatory Planning; any other location shall be subject to review and approval of the Planning Board.
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.

The Chairman then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard applauded the efforts of the neighbors and the developer to reach a compromise that will preserve such a significant structure. Michael Shepard stated that the current proposal neither implicates the demolition delay by-law nor the affordable housing requirements of the zoning by-law. The Building Commissioner stated that he had no objections to the proposed development; that he prefers the proposed adaptive re-use of the current building over the original proposal to demolish the current building to build a box, and he will ensure that the State Building Code provisions are satisfied.

Having heard all the testimony and after deliberation, the Board made the following findings pursuant to Section 9.05 of the Zoning by-Law:

a. The site lies in the M-1.5 Zoning District. The site is an appropriate location for such a use, structure, or condition: The proposed design is a residential use in a multi-family residential district. The surrounding buildings have considerably more units and are substantially taller than the proposed structure. The proposed project is comparatively small in scope in the context of its immediate abutters.

b. For the reasons set forth above, the use as proposed by the Petitioner will not adversely affect the neighborhood. In addition, the adaptive re-use of a historic asset is a benefit to the neighborhood and the entire community.

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.

e. 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 special permits pursuant to Sections 5.05, 5.09.2.d, 5.43, 5.50, 5.51, 5.60, 5.70, 5.91, 6.02.1, 6.04, 6.04.2d, 6.04.2e, 6.04.3, 6.04.4b, 6.04.5b and 6.04.12. The foregoing grants represent all the zoning relief requested to build the proposal as submitted in the plans, and are granted subject to the following conditions:

1. **Prior to the issuance of a building permit, final plans including preservation or replication of important architectural elements as much as possible, indicating façade design, colors, materials, windows, rooftop details, walls, and placement of utilities for HVAC and parking garage supply and exhaust systems, shall be submitted for the review and approval of the Planning Board.**
2. **Prior to the issuance of a building permit, final site and landscaping plans, indicating site design, landscaping, fencing, lighting, drainage details, garage parking layout, and limited landscaping on the rear abutting property at 1265 Beacon Street, if agreed to by the 1265 Beacon Street Condominium Association, shall be submitted for the review and approval of the Assistant Director for Regulatory Planning.**
3. **The transformer shall be located in the basement or in an underground vault, subject to the review and approval of the Assistant Director for Regulatory Planning; any other location shall be subject to review and approval of the Planning Board.**
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 70 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.

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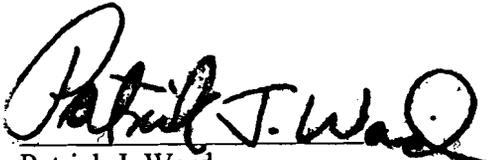
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Mark Zuroff, Chairman

Filing Date: August 17, 2010

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals