



# TOWN of BROOKLINE

*Massachusetts*

BOARD OF APPEALS

**TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 06005**

Petitioner, Mark Kats, Trustee, applied to the Building Commissioner for permission to increase the seating capacity at the restaurant located at 1627 Beacon Street from 45 seats to 95 seats per plans. The application was denied and an appeal was taken to this Board.

On January 12, 2006, 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 2, 2006 at 7:00 p.m., as the time and place of a hearing on the appeal in the Selectmen's Hearing Room on the sixth floor of the Town Hall. Notice of the hearing was mailed to the Petitioner, to its 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 scheduled hearing was published February 16, 2006 and February 23, 2006, 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: KATS MARK TR  
Location of Premises: **1627 BEACON ST BRKL**  
Date of Hearing: **03/02/2006**  
Time of Hearing: **07:00 p.m.**  
Place of Hearing: **Selectmen's Hearing Room**

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

- 1) 6.02.1; Table of Off-Street Parking Space Requirements; Variance Required**
- 2) 8.02.2; Alteration or Extension; Special Permit Required.**
- 3) Board of Appeals Decision: Case #3434 dated January 8, 1998; Case #3434A dated July 3, 1998 and Case #3547 dated March 8, 200; Modification Required**

Of the Zoning By-Law to increase the seating capacity for the existing restaurant for 45 seats to 90 seats per plans

At **1627 BEACON ST BRKL**

Said Premise located in a G-1.75 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 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**

**Publish: 02/16/2006, and 02/23/2006**

At the time and place specified in the notice, this Board held a public hearing.

Present at the hearing were Board members Lawrence E. Kaplan, Bailey S. Silbert and

Sarah Sheldon. Petitioner was represented at the hearing by Attorney Jeffrey P. Allen of Seegel, Lipshutz & Wilchins, P.C.

At the hearing, Tim Greenhill, Planner of the Planning Department, distributed the Planning Board Report dated February 9, 2006. Mr. Allen then described the factual background for the petition as follows:

1627 Beacon Street is a two-story commercial building located at the southwest corner of Washington Square which houses the Vernissage Restaurant, formerly the Russian Village Restaurant. The restaurant currently has customer seating on two floors. The building is part of a long row of commercial buildings with a very narrow rear alley where the restaurant stores trash.

The applicant, Mark Kats, is requesting to expand the Vernissage Restaurant. This proposal will increase the seating from the existing 45 seats to 95 seats. A bar is also proposed that is showing an additional 5 seats. The applicant has indicated that they have secured an additional nine (9) parking spaces in the immediate neighborhood located at 1668 Beacon Street (Stanetsky Memorial Chapel). The applicant has stated that the parking spaces will be available daily after 5:00 p.m. The applicant has noted that these spaces would be in addition to the existing five (5) spaces approved from previous submittals.

Mr. Allen explained to the Board that this request has been generated by the need of the restaurant to have more seats in order to be able to accommodate private functions. Mr. Allen explained that this restaurant has become a focal point for the local Russian community and the additional seats are necessary in order for that community to have a place to host their events.

Mr. Allen reviewed the zoning relief necessary for this project to go forward, and stated that literal compliance with the requirements of the By-Law is not feasible in light of the lot in question. The relief includes one variance in regards to parking. In particular, Mr. Allen stated that as a result of the topography of the lot, failure to grant the requested variance would cause substantial hardship to the property owner.

The zoning history of the property with the Board is as follows:

BOA Case #3434 (9 January 1998) – The Board of Appeals approved conversion of upper level space into restaurant with 45 seats. Five conditions were imposed including stipulation that trash pick up and deliveries be conducted from the back alley and not from Beacon Street. Another condition limited the restaurant operating hours to begin after 5:00 p.m.

BOA Case #3434-A (3 July 1998) – The Board of Appeals approved a modification to condition #1 in Case #3434 which required valet parking established for 10 off-site spaces. The condition was modified to eliminate the required valet service, but maintained the requirement of 10 off-site spaces.

BOA Case #3574 (8 March 2000) – The Board of Appeals approved a modification to condition #3 of Case #3434 which restricted the hours of operation to after 5:00 p.m. only. The condition was modified to allow the restaurant on the second floor to open at 11:00 a.m. for lunch service.

The zoning relief required is as follows:

Modification of Board of Appeals Case #3434-A

Condition #1 requires that the applicant provide ten (10) off-site parking spaces for its patrons subject to posting notification of those spaces within the subject premises and all restaurant advertising. The applicant had, at the time, indicated that they were able to secure five (5) spaces at the Stanetsky Memorial Chapel after 5:00 p.m. and five (5) spaces at property owned by Emmanuel Greens on 1674 Beacon Street after 5:00 p.m.

There was concern from the Board at the time as to the impact of the Beacon Street renovation project and how this would impact the traffic situation in this location. The new proposal requires that the applicant secure an additional nine (9) spaces off site, request relief to waive the parking to be provided off site for the additional seating, or request a variance not to provide additional parking.

Modification of Board of Appeals Case #3574

This request modified Condition #3 of the original approval to allow the opening of the restaurant on the second floor at 11:00 a.m. Although the parking approved as part of the original approval would not be available until after 5:00 p.m. it was felt that the lunch clientele would consist mainly of local people and would be less likely to drive to the restaurant and therefore the parking was not as much of an issue during lunch hours. The applicant has indicated that the restaurant will not be open weekdays for lunch.

Section 6.02.1 Table of Off Street Parking Requirements

	Existing	Required	Proposed	Finding
Number of Parking Spaces	0 10 (off site)	19 Spaces	0 (19 off site*)	Variance

\*(5) spaces at the Stanetsky Memorial Chapel at 5:00 p.m., five (5) spaces at property owned by Emmanuel Greens on 1674 Beacon Street after 5:00 p.m. and nine (9) spaces at 1616 Beacon Street.

Section 8.02.2 Alterations and Extensions

A special permit is required for alterations to a pre-existing nonconforming structure except that any non-conforming condition may not be increased.

The Chairperson asked if there were any members of the public that wished to address the Board regarding the request by Mr. Kats. Several members of the public expressed their support for the restaurant and their request to increase their seating capacity. Several speakers pointed out that due to the community nature of the restaurant parking was not an issue as many people walk to the establishment or take public transportation. No member of the public spoke in opposition.

Tim Greenhill, on behalf of the Planning Board, gave the following report:

The Board has concerns about parking in this location. The expansion of this use from a 45 seat to a 95 seat restaurant will generate additional traffic and delivery impacts on the immediate neighborhood. The applicant has submitted a memo from the Stanetsky Memorial Chapel dated February 6, 2006 indicating that nine (9) parking spaces at the chapel nine have been made available. The applicant has represented that these spaces are in addition to the five (5) already in that location and the five (5) located at 1674 Beacon Street. These off-site spaces would be

available after 5:00 p.m. on weekdays and all day on Saturday and Sunday. The applicant has indicated that the restaurant would not be open during weekdays for lunch. The Board was concerned that in recommending a variance, a different use or even a restaurant use without the same locally based clientele would generate a higher level of traffic and would therefore have amore significant traffic impact on the neighborhood. The Board felt that the variance would be appropriate if it related to this specific applicant and use. Therefore the Planning Board recommends approval subject to conditions.

Frank Hitchcock, Senior Building Inspector, spoke on behalf of the Building Commissioner. He stated the various sections of the Zoning By-Law under which relief is needed. The Building Department has no objections to the petition and will ensure that all State Code provisions are satisfied.

The Board having deliberated on this matter and considered the foregoing testimony, concludes that it is desirable to grant all relief required by this project, subject to certain conditions. The Board further finds that the proposed alterations will not be more detrimental to the neighborhood than the existing conditions. The proposed use as designed will not have any effect on the traffic nor will it cause a nuisance or serious hazard to vehicles or pedestrians.

The Board further makes the following findings pursuant to Section 9.5:

1. The specific site is an appropriate location for a restaurant.
2. The use as proposed by the Petitioner will not adversely affect the neighborhood.
3. There will be no nuisance or serious hazard to vehicles or pedestrians from the proposed use.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

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

In regard to the requested variance concerning parking, the Board finds that literal compliance with the requirements of the By-Law is not feasible in light of the existing conditions at the lot in question. As a result of the unique topography of the lot and the unique building on the lot, both peculiar to this site, failure to grant the requested variance would cause substantial hardship to the property owner. Granting the requested variance will not be detrimental to the public good nor nullify nor substantially derogate from the intent or purpose of the Brookline Zoning By-Law. In particular, granting the variance will encourage an appropriate use of the land.

Accordingly, the Board modifies its decisions in Case Numbers 3434A and 3574 and grants special permits pursuant to 8.02.2 and a variance from 6.02.1 of the By-Laws, subject to the following conditions:

1. The applicant shall provide 19 off site parking spaces after 5:00 p.m. for its patrons and post reasonable notification of those spaces within the subject premises, including the location of parking, in all restaurant advertisements.
2. All trash pick-up and deliveries shall be made through the rear door, not the front, with all trucks stopping at the Washington Street end of the rear access-way, not on University Road, nor in front of the building on Beacon Street. Pick-ups and deliveries shall be made after 9:30 a.m.
3. The restaurant shall not be opened for business before 5:00 p.m. Monday to Friday and 11:00 a.m. Saturday to Sunday.
4. The applicant shall offer all employees a free T-Pass to encourage the use of public transportation.
5. The size and type of trash and garbage collection storage facility shall be approved by the Health Department.

6. The variance is granted subject to a five (5) year time limit at which time a specific request for an extension will be considered by the Board of Appeals.
7. The variance granted is limited to use of the site only by a restaurant which specializes primarily in a Russian style cuisine.

Unanimous Decision of  
The Board of Appeals

  
\_\_\_\_\_  
Lawrence E. Kaplan

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK  
274386.1.3615.3500  
2006 MAR 30 P 5:00

Filing Date: March 30, 2006

A True Copy:  
ATTEST:



\_\_\_\_\_  
Patrick J. Ward  
Board of Appeals