



# TOWN OF BROOKLINE

## *Massachusetts*

### BOARD OF APPEALS

DIANE R. GORDON, Co-Chair  
HARRY MILLER, Co-Chair  
BAILEY S. SILBERT

333 Washington Street  
Brookline, MA 02445  
617-730-2010  
Fax: 617-730-2298  
PATRICK J. WARD, Secretary

### TOWN OF BROOKLINE BOARD OF APPEALS CASE NO. 060073

Petitioner, 299 Harvard Street Trust, applied to the Building Commissioner for permission to increase the seating for a proposed restaurant at 299 Harvard Street to 125 seats per plans. The application was denied and an appeal was taken to this Board.

On November 16, 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 January 11, 2007, at 7:00 p.m. in the Selectmen's Hearing room on the sixth floor of the Town Hall as the time and place of a hearing. 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 December 21, 2006 and December 28, 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: 299 HARVARD STREET TRUST  
Location of Premises: 299 HARVARD STREET BRKL  
Date of Hearing: 01/11/2007  
Time of Hearing: 7:00 p.m.  
Place of Hearing: Selectmen's Hearing Room, 6<sup>th</sup>. Floor

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

1. **6.02.1; Table of Off-Street Parking Space Requirements; Variance Required.**
2. **6.02.1.b; Off-Street Parking Space Regulations; Special Permit Required.**
3. **8.02.2; Alteration or Extension; Special Permit Required.**

Of the Zoning By-Law to increase the seating for the restaurant to a proposed total of 105 seats per plans

at 299 HARVARD STREET 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:** December 21, 2006 and December 28, 2006.

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Board members Lawrence Kaplan, Enid Starr, and Bailey Silbert. Petitioner was represented at the hearing by Attorney Jeffrey P. Allen of Seegel, Lipshutz & Wilchins, P.C.

At the hearing, Adam Serafin, Planner of the Planning Department distributed the Planning Board Report dated January 4, 2007. Mr. Allen then described the factual background for the petition as follows:

299 Harvard Street is an attached, single-story brick building located mid-block between Green and Babcock Streets in the heart of Coolidge Corner. Constructed in 1928, the building originally featured a brick exterior with a cast stone façade. The cast stone was removed and a recessed storefront below a brick façade with an arched metal awning was constructed in 1963. The building was further remodeled in 1983 into the general form in which it exists today. The building has been utilized by retail and restaurant uses in the past, most recently Zathmary's market and restaurant. The surrounding neighborhood is characterized by commercial uses similar in scale to the Petitioner's. Mr. Allen explained that in the past, restaurants at this location had seating well in excess of what is being requested, but the right to that number of seats was lost when Zathmary (the most recent tenant) used most of the space for a market.

The Petitioner, 299 Harvard Street Trust, is proposing to establish a Panera Bread restaurant with indoor seating for 105 persons and outdoor seating for 20 persons, for a total of 125 seats. There are no onsite parking spaces, as the building occupies the entire lot. The proposed restaurant will sell breads, soups, salads, sandwiches, pastries and beverages. The Petitioner will require a common victuallers license from the Town's Board of Selectmen.

As part of the proposal, the Petitioner will be renovating the façade of the building and installing new signage, and has accordingly and simultaneously applied for façade/sign review.

Mr. Allen reviewed the zoning relief necessary for the proposed alterations and increase in restaurant seating:

**Section 6.02.1.b – Off-Street Parking Space Requirements**

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>	<u>Relief</u>
Parking Spaces (1 space per 5 seats)	10	0	0	Special Permit/Variance*

\* Under Section 6.02.1.b, the Board of Appeals may waive by special permit up to six (6) spaces for a non-residential use in a business district. Evidence to support the special permit includes the operating characteristics of the proposed use, peak parking demand in relation to the peak parking demand of other uses, need for employee parking, and availability of existing public parking and transit facilities in the area. By increasing the number of seats in this restaurant from 75 to 125, the number of required parking spaces will be 10 (50/5). The Petitioner is seeking a special permit for relief of parking requirements for the six (6) parking spaces associated with the increase in indoor seating and variance relief of the parking requirements for the four (4) parking spaces associated with the outdoor seating.

**Section 8.02.2 – Alteration or Extension**

A special permit may be granted under Section 8.02.2 to alter or enlarge a non-conforming condition.

Mr. Allen explained the zoning request by stating that the premises had 75 seats as of right and could increase by 30 seats pursuant to a special permit and anything above 105 seats was by way of a variance. The 20 seats being sought by variance would be the proposed outdoor seats.

With regard to the requested variance to allow for outdoor seating, Mr. Allen stated that literal compliance with the parking requirements under the By-Law is not feasible in light of the existing conditions at the lot in question. In particular, Mr. Allen stated that as a result of the unique character of the lot and existing structure which prohibits the placement of any onsite parking at the site, failure to grant the requested variance would cause substantial hardship to the Petitioner by preventing the Petitioner from fully utilizing the property. Mr. Allen explained that

the requested variance was particularly appropriate under the circumstances of this petition where the recessed façade of the structure was uniquely suited to accommodate the proposed outdoor seating area, and also because the site had previously enjoyed additional seating but had lost its grandfathered status. The structure will also uniquely provide relief space for urban pedestrians, and the structure, having once housed Jack and Mqrians, is a unique facility for restaurants and in the Seating capacities it has accommodated.

The Chairperson inquired if any members of the public wished to be heard. No members of the public asked to be heard.

Adam Serafin, on behalf of the Planning Board, gave the following report:

The Planning Board has no objection to this proposal to establish a restaurant with a seating capacity of 125. Parking relief for this proposal is justified by the fact that it is located in Coolidge Corner, which is a pedestrian-oriented environment, close to public transportation, and in close proximity to a number of public parking lots and on-street metered parking spaces. The Petitioner cannot provide parking onsite due to the lot's size and the placement of the building on the lot.

As there is not onsite parking available at this location, and to encourage the use of public transportation for employees, the management should provide partially subsidized T passes to all restaurant employees.

The Petitioner will be utilizing outdoor seating for this restaurant when the weather permits. Therefore, steps must be taken to mitigate any negative aesthetic or sanitary impacts on the surrounding streetscape. In order to prevent litter on Harvard Street, disposable tableware should not be used, and trash containers should be located in the outdoor seating area. The applicant should submit information regarding the style and color of all tables, chairs, and other outdoor furniture to be used in the outdoor seating area, as well as a plan for the storage of outdoor furniture when not in use. Trash containers should also be located in the outdoor seating area.

Therefore, the Planning Board recommends approval of the application for a special permit for relief of parking requirements for the six (6) parking spaces associated with the increase in indoor seating, and approval of the requested variance relief of the parking requirements for the four (4) parking spaces associated with the increase in outdoor seating, subject to conditions.

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

The Board having deliberated on this matter, considered the foregoing testimony and concluded that it is desirable to grant all the relief requested by this Petitioner, subject to certain conditions.

The Board considered the visual relationships of site and proposed façade alterations to the use, scale, and architecture of the surrounding community. The Board has considered whether the proposal creates harmonious visual relationships and the Board has determined that the relationship is, in general, harmonious. The Board further finds that the proposed increase in restaurant seating and parking relief will not be more detrimental to the neighborhood than the existing conditions. The use as proposed to be developed and the site design are aesthetically pleasing. The proposed design is adequate and appropriate for the neighborhood. The proposed development will not have any substantial effect on the traffic, nor will it cause a nuisance or serious hazard to vehicles or pedestrians. The Board finds that the proposed use will not remove any existing low or moderate-income housing in the Town.

Accordingly, the Board makes the following findings pursuant to Sections 5.09 and 9.5:

1. The location, topography, vicinity and natural features of the site make it particularly suitable for the proposed façade changes, increase in restaurant seating and seasonal outdoor seating.
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.
4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
5. The proposed increase in restaurant seating will not have a significant adverse affect on the supply of housing available for low and moderate income people.

In regard to the requested variance, the Board finds that the 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 lot conditions and the unique shape of the existing building, failure to grant the requested variances would cause substantial hardship to the property owner. Granting the requested variance to dispense with the four (4) parking spaces associated with the proposed outdoor seating will not be detrimental to the public good nor nullify or substantially derogate from the intent or purpose of the Brookline Zoning By-Law.

Accordingly, the Board grants special permits pursuant to Sections 6.02.1.b and 8.02.2 to alter the restaurant's façade and to waive the six (6) parking spaces associated with the increase in indoor seating, and a variance from Section 6.02.1 to dispense with the parking requirements for the four (4) parking spaces associated with the proposed outdoor seating. The foregoing grants are all zoning relief requested to increase the seating for the restaurant per the plans, and are granted subject to the following conditions:

1. The restaurant's management shall implement an employee T-pass program, where management subsidizes at least 50 percent of the cost of monthly subway and bus T-passes for all of the restaurant's employees.

2. A plan for the storage of the tables and chairs for the outdoor seating area shall be submitted, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. The color and style of tables, chairs, and umbrellas, if used, and the type of plants, pots, and waste container shall be subject to the review and approval of the Assistant Director of Regulatory Planning.
4. The outdoor seating areas shall not exceed the allowed 20 seats.
5. Prior to obtaining 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 showing dimensions stamped and signed by a registered architect or land surveyor as provided already, and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeal

  
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Lawrence E. Kaplan  
Chairman

Filing date: Janaury 30, 2007

A True Copy:

ATTEST:

299709.1.4054.3500

  
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Patrick J. Ward  
Board of Appeals