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Book 32351 Pg 303

Town of Brookline
Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2014-0013
1212-1220 BOYLSTON LLC

Petitioner, 1212-1220 Boylston, LLC, applied to the Building Commissioner for permission to convert an existing retail use to a bank with drive thru and install parking. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed April 24, 2014 at 7:30 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, to their 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 April 3, 2014 and April 10, 2014 in the Brookline Tab, a newspaper published in Brookline. A 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: **1212-1220 BOYLSTON, LLC**
Owner: **1212-1220 BOYLSTON, LLC**
Location of Premises: **1212-1220 BOYLSTON STREET**
Date of Hearing: **APRIL 24, 2014**
Time of Hearing: **7:30 PM**
Place of Hearing: **SELECTMEN'S 6TH FLOOR CONFERENCE ROOM**

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

Section 4.07: Table of Use Regulations, Use #39
Section 5.09.2.a: Design Review
Section 5.43: Exceptions to Yard and Setback Regulations
Section 5.72: Accessory Buildings or Structures in the Rear Yard (Dumpster)
Section 6.02, Paragraph 1: Table of Off-Street Parking Regulations
Section 6.02.5.c: Off-Street Parking Space Regulations
Section 6.04.6: Design of All Off-Street Parking Facilities
Section 8.02.2: Alteration or Extension

of the Zoning By-Law to **CONVERT AN EXISTING RETAIL USE TO A BANK WITH DRIVE THRU AND INSTALL PARKING** at **1212-1220 BOYLSTON STREET.** Said Premises is located in a **G1.0 (General Business) Business 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 Office of the Town Clerk at 617-730-2007 or check the meeting calendar at:www.brooklinema.gov.

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 ***Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneirson@brooklinema.gov.***

Jesse Geller
Jonathan Book
Christopher Hussey

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Zoning Board of Appeals Chairman Jonathan Book, and Board Members Christopher Hussey and Mark Zuroff. The case was presented by the attorney for the Petitioner, Robert L. Allen, Jr.,

Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was Jason Plourde, traffic engineer from Tighe & Bond.

Zoning Board of Appeals Chairman Jonathan Book called the hearing to order at 7:30 p.m. Attorney Allen stated that the Petitioner proposes to demolish 1212 and 1216 Boylston Street and use the two lots as a parking area for a bank at 1220 Boylston Street. Attorney Allen stated that the Petitioner will utilize the existing structure and renovate the interior and exterior of the façade.

Attorney Allen presented to the Board a background of the Petitioner and the property, stating the following: Petitioner is a representative of Brookline Bank, a local institution since 1871. Attorney Allen stated that the Petitioner is interested in opening a branch location at 1220 Boylston Street directly across the street from the Chestnut Hill Shopping Center. Attorney Allen stated that the existing property is occupied by Dining Room Showcase. Attorney Allen stated that the Petitioner applied for a Demolition Certificate for 1212 and 1216 Boylston Street on November 5, 2012. Attorney Allen stated that the Preservation Commission reviewed the cases on December 11, 2012, and a stay of demolition was imposed on the two structures for one year. Attorney Allen stated that the stay of demolition expired on December 11, 2013.

Attorney Allen noted that the original site plan indicated that the Petitioner encroached on the Town of Brookline property, but the survey conducted by Tighe & Bond, dated March 21, 2014, correctly showed the Petitioner within the property owner's boundary line. Attorney Allen stated that the immediate neighborhood consists of residential and commercial properties that suffer from traffic congestion at the intersection of Boylston Street and Holly Lane. Attorney Allen stated that due to rising neighborhood concerns, the Petitioner promptly held a neighborhood meeting to discuss traffic flow, curb cuts, and parking as they relate to the drive-thru ATM use.

Attorney Allen yielded the floor to Jason Plourde to discuss the traffic and transportation plan for the Brookline Bank branch location at 1220 Boylston Street.

Zoning Board of Appeals Chairman Jonathan Book asked Mr. Plourde how many parking spaces would be used by employees. Attorney Allen stated that the Petitioner expects 3-5 employees to use the parking lot. Zoning Board of Appeals Member Mark Zuroff inquired about the metered parking spaces on Boylston Street. Attorney Allen stated that three metered spaces would be removed due to the new curb cut. Zoning Board of Appeals Member Zuroff asked whether the ATM would have an attendant. Attorney Allen stated that there would be an attendant during the hours of operation, but that there would be no 24 hour attendant.

Attorney Allen stated that the Planning Board voted unanimously in support of **Section 4.07, Use #39** of the Zoning By-law to permit a drive-thru use. Attorney Allen stated that the Petitioner is also requesting relief for **Section 5.09** of the Zoning By-law for Design Review, however the Petitioner did not submit a final site plan or elevations to the Planning Board. Attorney Allen stated that the Planning Board was comfortable approving the use with the condition that the Petitioner return to the Planning Board for final design review to discuss building materials, signage, and landscaping materials.

Attorney Allen next discussed **Section 5.43** and **Section 5.72** of the Zoning By-law with specific regard to the dumpster located in the rear yard setback. Attorney Allen stated that under **Section 5.43** of the Zoning By-law, the Zoning Board of Appeals may waive special permit requirements if the applicant provides counterbalancing amenities. Attorney Allen stated that the proposed location for the dumpster may change, but that the petitioner will submit a final landscaping to the Assistant Director of Regulatory Planning.

Attorney Allen stated that under **Sections 6.02, 6.02.5.c,** and **6.04.6** of the Zoning By-law, the Petitioner complies with the parking requirements. Attorney Allen stated that under **Section 6.02.5.c**, the

proposal requires 14 parking spaces. Attorney Allen stated that there is a theoretical parking credit from the previous use of 7 parking spaces for the retail store, on 1220 Boylston Street lot, therefore the parking requirement is reduced to 7 parking spaces.

Finally, Attorney Allen discussed relief under **Section 8.02.2** of the Zoning By-law where a special permit is required under **Section 9.05** of the Zoning By-law to alter and/or extend this non-conforming structure. As for **Section 9.05**, (1) the specific site is an appropriate location where the property is surrounded by commercial and residential uses in the G-2.0 District and is in keeping with the streetscape; (2) there will be no adverse effect on the neighborhood where the use will remain commercial; (3) no nuisance or serious hazard to vehicles or pedestrians exists where this will be a positive pedestrian experience with more parking and better traffic flow; (4) adequate and appropriate facilities will be provided for the proper operation ; and (5) development will not have any effect on the supply on housing available for low and moderate income people.

Zoning Board of Appeals Member Christopher Hussey inquired about **Section 5.43** of the Zoning By-law with regard to the setbacks affected by the location of the proposed dumpster. Attorney Allen stated that the size and location of the dumpster remains subject to change by the Planning Board.

Zoning Board of Appeals Chairman Jonathan Book asked if there was anyone present who wished to speak in favor of this application. No one spoke in favor.

Zoning Board of Appeals Chairman Book asked if there was anyone present who wished to speak in opposition to this application. No one spoke in opposition.

Timothy Richard, Planner for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS:

1. **Section 4.07** – Table of Use Regulations, Use #39
2. **Section 5.09** – Design Review

The applicant has not submitted elevations for review by the Planning Board. This proposal is subject to Design Review because it involves demolition of two existing structures, a change of use, and the property is located along Boylston Street.

3. **Section 5.43** – Exceptions to Yard and Setback Regulations
4. **Section 5.72** – Accessory Buildings or Structures in the Rear Yard (Dumpster)
5. **Section 6.02** – Paragraph 1, Table of Off-Street Parking Requirements
6. **Section 6.02.5.c** – Off-Street Parking Space Regulations
7. **Section 6.04.6** – Design of All Off-Street Parking Facilities

The applicant is required to screen the property from abutting properties with either a densely planted four foot wide strip of shrubs or trees which are to be at least four feet high at the time of planting; or the applicant can install a wall, barrier, or fence that is at least five feet high, but not more than seven feet. The applicant is also required to shield lighting in the parking lot so it does not shine upon abutting properties, or other properties nearby.

Dimensional Requirements	Required	Existing	Proposed	Relief
Number of Parking Spaces	7*	0	10	Complies

* Under **Section 6.02.5.c**, where a principal use includes a drive-in use where customers remain in their cars, off street parking shall be provided at twice the number specified in the table in **Section 6.02, Paragraph 1**, which makes the required parking 14 spaces; however, there is a theoretical parking credit from the previous use of 7 parking spaces for the retail store on the 1220 Boylston Street lot, which reduces the parking requirement.

8. **Section 8.02.2** – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming structure or use.

Mr. Richard stated that the Planning Board supports the drive-through use of the applicant's proposal. However, because the applicant did not submit elevations or a landscape plan, the Planning Board is unable to make a recommendation regarding Design Review. Mr. Richard stated that since the proposal is to replace buildings along a commercial street with a parking lot, the Planning Board would like the applicant to consider ways to provide an attractive and consistent streetscape.

Mr. Richard stated that prior to issuance of a building permit, the proposal will require final approval from the Massachusetts Department of Transportation for the curb cut along Boylston Street. Mr. Richard stated that the curb cut along Holly Lane requires approval from the Director of

Engineering and Transportation. Mr. Richard stated that the Planning Board is concerned that the curb cut along Holly Lane will displace three metered parking spaces; however, the parking lot should accommodate the loss of parking for customers visiting the existing retail uses.

Mr. Richard stated that should the Board of Appeals recommend approval, the Planning Board recommends that the applicant return to the Planning Board for design review and final approval of the landscaping plan. Mr. Richard stated that the Planning Board would like to see a landscaping plan that shows a 4' high fence to screen the rear and side yards of the bank and the parking lot, and a 3' fence in the front until the edge of the Boylston Street curb cut. Mr. Richard stated that the Board would like to see landscaping installed along the fence and on the island between the parking area, drive-thru, and bank. Mr. Richard stated that the Board is also concerned with the proposed location of the dumpster. Mr. Richard stated that the Board would like to see the dumpster pushed back towards the side and rear of the property and screened with a low fence or landscaping.

The Planning Board recommends approval of the drive-thru use and of the plans by Tighe & Bond Consulting Engineers, dated 2/13/14. However, should the Board of Appeals find that the applicant meets the statutory requirements for a special permit, the Planning Board recommends the following conditions:

1. Prior to the issuance of a building permit, the applicant shall return to the Planning Board for final Design Review of elevations and approval of a final landscaping plan.
2. Prior to the issuance of a building permit, the applicant shall submit a final lighting plan for the parking lot to the Building Commissioner for review and approval.
3. Prior to the issuance of a building permit, a final site plan and elevations, and a final landscaping plan, consistent with what was approved by the Planning Board shall be submitted to the Assistant Director of Regulatory Planning for review and approval.
4. Prior to the issuance of a building permit, the applicant shall obtain approval from the Director of Engineering and Transportation for all curb cuts and changes to on-street parking.

5. 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 building elevations 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 Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. Chief Building Inspector Michael Yanovitch stated that the Building Department had no objections to the relief sought under this application. Mr. Yanovitch stated that the Petitioner's proposal will substantially improve the flow of traffic onto Route 9. Mr. Yanovitch stated that the proposal is well organized and if the Board of Appeals approves relief, the Building Department will work the Petitioner to ensure all conditions imposed by the Board of Appeals are satisfied.

In deliberation, Chairman Jonathan Book asked why the Petitioner chose to proceed with zoning relief for **Sections 4.07**, **5.09**, **5.43**, **5.72**, **6.02**, **6.02.5.c**, **6.04.6**, and **Section 8.02.** of the Zoning By-Law when the Petitioner has not submitted elevations or provided architectural drawings for the proposed location. Attorney Allen stated that the Petitioner has a responsibility to establish whether the use will be permitted under **Section 4.07, Use #39** of the Zoning By-law before contracting with the owner of the building and engaging an architect. Attorney Allen stated that unlike 82 Green Street, where the applicant first filed an appeal to establish the use and then an appeal for design review, the Petitioner filed one appeal for special permit relief in order to expedite the process. Attorney Allen stated that the applicant was not proposing any changes to the exterior of the building other than the installation of the drive-thru ATM which would require the installation of an overhang over the ATM, and that the proposed changes predominantly relate to traffic. He further indicated that final review of building materials and landscaping is always subject to the Assistant Director of Regulatory Planning. Mr. Yanovitch stated that the Board of Appeals may impose a condition that, upon the Board of Appeals

approving the relief, the Petitioner return to the Planning Board for facade review and submit a landscaping plan to the Assistant Director of Regulatory Planning.

Chairman Book asked whether the Board of Appeals had sufficient information to make a decision about Design Review. He acknowledged that that the applicant was not proposing any changes to the exterior of the building other than the installation of an overhang for the ATM. Board of Appeals Member Christopher Hussey stated that he was in support of the proposal and felt the only question for design review relates to the building materials and façade review. Zoning Board of Appeals Member Mark Zuroff stated that he would like to impose conditions regarding façade review by the Planning Board and landscaping subject to the final review of the Assistant Director of Regulatory Planning. Otherwise, the Board agreed that they had sufficient information to grant a special permit for Design Review.

Chairman Jonathan Book stated that he was in favor of a drive-thru accessory use where the parking complies and the layout is well organized. Chairman Book stated that in order to approve special permit relief, he would like to amend Condition No. 1 to require the Petitioner to return to the Planning Board for final façade review and Condition No. 3 to require the Petitioner to submit a final landscaping plan subject to the review of the Assistant Director of Regulatory Planning.

The Board then determined, by unanimous vote that the requirements for a special for **Sections 4.07; 5.09; 5.43; 5.72; 6.02; 6.02.5.c; 6.04.6;** and **Section 8.02.2** were met. The Board made the following specific findings pursuant to said **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.

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

1. **Prior to the issuance of a building permit, the applicant shall return to the Planning Board for Façade Review.**

2. **Prior to the issuance of a building permit, the applicant shall submit a final lighting plan for the parking lot to the Building Commissioner for review and approval.**

3. **Prior to the issuance of a building permit, a final site plan and elevations, and a final landscaping plan shall be submitted to the Assistant Director of Regulatory Planning for review and approval.**

4. **Prior to the issuance of a building permit, the applicant shall obtain approval from the Director of Engineering and Transportation for all curb cuts and changes to on-street parking and site circulation.**

5. **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 building elevations stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Unanimous Decision of
The Board of Appeals

Filing Date: 6-6-14

Jonathan Book, Chair~~man~~

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals

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2014 JUN -6 P 3: 36

Twenty days have elapsed and no appeal has been filed.

A True Copy:

Patrick J. Ward
Town Clerk