



BOARD OF APPEALS  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

# *Town of Brookline*

## *Massachusetts*

Town Hall, 1<sup>st</sup> Floor  
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Brookline, MA 02445-6899  
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2014-0082  
WONG FAMILY NOMINEE TRUST

Petitioner, Cecilia Caballero, applied to the Building Commissioner for permission to change occupancy from a florist shop to parent toddler recreation facility. 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 January 15, 2015 at 7:10p.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 December 18, 2014 and December 25, 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. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

**224 WASHINGTON STREET – CONVERT OCCUPANCY FROM A FLORIST TO A PARENT TODDLER RECREATION FACILITY in a G-2.0 General Business Zoning District, on January**

**8, 2015 at 7:10 PM, in the 6<sup>th</sup> Floor Selectmen's Hearing Room (Petitioner: ALLEN ROBERT ATTORNEY; Owner: WONG, TR ERIC CHUN NING)**

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

- 1. Section 4.07: Table of Use Regulation Use #16**
- 2. Section 6.02: Paragraph 1: Table of Off-Street Parking Regulations**
- 3. Section 6.02.1.b: Off Street Parking Space Regulations**

*Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: [www.brooklinema.gov](http://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 Town programs and services may 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](mailto:rsneirson@brooklinema.gov).***

*Jesse Geller, Chair  
Christopher Hussey  
Jonathan Book*

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Jesse Geller and Board Members Mark Zuroff and Avi Liss. The case was presented by Bailey C. Gaffney, Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was Cecilia Caballero, owner of The Golden Chickpea, LLC, 185 Devonshire Street, Suite 601, Boston, MA 02110.

Chairman Jesse Geller called the hearing to order at 7:10 p.m. Ms. Gaffney stated that the Petitioner proposes to convert the florist shop previously operated within the premises under the business name E.C. Florist Shop and Gifts into a 840s.f. recreation facility for parents and children called The Golden Chickpea.

Ms. Gaffney presented to the Board a background of the Petitioner and the proposal, stating the following: 224 Washington Street is a four-story commercial and residential building located on the west side of Washington Street in Brookline Village; the Petitioner is a certified child psychologist with twenty years experience counseling children and families; The Golden Chickpea would be a recreational center providing parenting resources, structured children's programs like fitness, music, and language classes, and freestyle playtime for children of all ages; the facility would be open from 9:00am – 7:00pm; the structured children's programs would be 90 minutes and take place between 9:00am – 3:45pm and the freestyle playtime would begin at 4:00pm; and there would be two employees, the Petitioner who would be on-site and responsible for the day to day operations, and a part-time employee responsible for managing the children's programs. Ms. Gaffney specified that parental or non-staff adult supervision is required for each child attending programs and that there would be a maximum occupancy of 26 adults (staff and others) and children.

Ms. Gaffney commented that the Planning Board voted unanimously in support of the proposal. She noted that the Planning Board did not expect the proposed use to present more intense user activity during peak daytime hours than the prior business.

Ms. Gaffney said that the Petitioner requests special permit relief to change the occupancy from a retail use to a recreational facility and to waive the parking requirements. She stated that **Section 4.07 Use #16** of the Zoning By-Law is classified as a public assembly use. Ms. Gaffney further stated that **Section 6.02, Paragraph 1** of the Zoning By-Law requires 1 off-street parking space for every 5 seats within a public assembly use. Ms. Gaffney stated that there are 26 fixed seats. Therefore, the total required parking for the proposed use is 5 parking spaces.

Ms. Gaffney stated that the Building Department calculated the existing parking pursuant to **Section 4.07** and **Section 6.02, Paragraph 1** of the Zoning By-Law and that under the Zoning By-Law

a ground floor retail use requires 1 parking space per 350s.f. of floor area, which in this case is 2.4 parking spaces. Therefore, there are theoretically 2 parking spaces credited to 224 Washington Street.

Zoning Board of Appeals Chairman Jesse Geller inquired about the theoretical parking credit. Ms. Gaffney stated that the conversion to a recreational facility does not negate the existence of the 2 theoretical parking spaces; instead, the theoretical parking spaces are considered a credit that may be applied to a future use. Ms. Gaffney stated that the Building Department applied the theoretical parking credit and the Petitioner only seeks relief for 3 parking spaces.

Ms. Gaffney discussed relief under Section 4.07 and Section 6.02 of the Zoning By-Law whereby a special permit is required under Section 9.05 of the Zoning By-Law. As for Section 9.05, Ms. Gaffney argued: (1) the specific site is an appropriate location where the facility is on the ground floor in Brookline Village; (2) there will be no adverse effect on the neighborhood where there are 8 existing child-care facilities in the immediate area; (3) there will be no nuisance or serious hazard to vehicles or pedestrians where the property does not have pick up or drop off times and is located in close proximity to the MBTA, 2-hour parking, and metered parking; (4) adequate and appropriate facilities will be provided for the proper operation; and (5) the development will have no effect on the supply of housing available for low and moderate income people.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in favor of the application. No one spoke in favor of the application.

Zoning Board of Appeals Chairman Geller asked if anyone wished to speak in opposition to the application. Susan Hoffman, 4 Davis Court, expressed concern with obstruction of the fire lane and unauthorized parking in the Davis Court parking lot.

John Rosa, Coordinator for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS:

1. Section 4.07 – Table of Use Regulations Use #16
2. Section 6.02, Paragraph 1 – Table of Off-Street Parking Regulations
3. Section 6.02.1.b – Off Street Parking Space Regulations

<b>Parking Requirements</b>	<b>Required Parking Spaces</b>	<b>Existing Parking Spaces</b>	<b>Proposed Parking Spaces</b>	<b>Relief</b>
<b>Public Assembly</b>	3 Additional Spaces	0	0	Special Permit*

\*Under *Section 6.02.1.b*, the Zoning Board of Appeals may waive up to 10 parking spaces, or 50% of required, whichever is greater, by special permit for a change of a non-residential use within a business district.

Mr. Rosa stated that the Planning Board was supportive of this proposal to change the occupancy at 224 Washington Street from a florist shop to a parent-toddler recreation center. Mr. Rosa further stated that the Planning Board believed the proposed new use would not present more intense user activity during peak daytime hours, and the site is located in close proximity to multiple public transportation systems and municipal parking lots. He stated that the proposed use stands to generate more community activity within a center for town business and culture. Therefore the Planning Board recommended approval of the plans submitted by XChange Architects LLC, dated 12/11/2014, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans to the Assistant Director for Regulatory Planning for review and approval
2. 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) final floor plans stamped and signed by a registered architect; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds

The Chairman then called upon John Rosa to deliver the comments on behalf of the Building Department. Mr. Rosa stated that the Building Department had no objections to the relief sought under this application. Mr. Rosa stated that if the Board grants special permit relief, the Building Department would work with the Petitioner to ensure the proposal is built in accordance with the Building Code.

Chairman Geller inquired about the licensing requirements relative to the proposed use. Ms. Gaffney responded that there were no licensing requirements through the Town of Brookline or the Commonwealth of Massachusetts. Mr. Geller expressed concern that the proposed use could be an effective way to circumvent the regulatory requirements under the Zoning By-Law and otherwise applicable to day care facilities. Zoning Board of Appeals Member Liss commented that this provision could enable interested parties to avoid approvals by the Town of Brookline Board of Health and Board of Selectmen.

Board Member Liss asked about the nature of the relationship between the adult and child participants. Ms. Gaffney responded that the Petitioner's mission is to provide a parenting support system for families with young children and a social support system for children of all ages. Mr. Liss highlighted the difficulty of managing a clientele that may have more than one child per household or households that have alternative forms of child care. Ms. Gaffney stated that the Petitioner does not want to exclude families that have more than one child per household, but would like to encourage parents and immediate family members to participate in the programming.

Zoning Board of Appeals Member Mark Zuroff inquired about insertion of a condition requiring action to prevent parking in the Davis Court parking lot immediately behind 224 Washington Street. Ms. Gaffney stated that the Petitioner is not opposed to a condition requiring membership materials to include a statement about the parking limitations on Davis Street and the Davis Court parking lot.

The Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application. Board Member Mark Zuroff stated support for the relief requested. Mr. Zuroff stated that the specific site is an appropriate location and the proposal is a better use of the space. Board Member Liss echoed support for the relief requested, but stipulated addition of a condition about the nature of the relationship between the adult and child participants. Chairman Geller stated support where the proposal

meets the requirements under **Section 9.05** of the Zoning By-Law, but agreed that the relief should be conditioned on the parking notice in the membership agreement and the familial relationship among the participants.

The Board then determined, by unanimous vote that the requirements for relief by special permit from the application of the provisions of **Sections 4.07** and **6.02.1.b** of the Zoning By-Law pursuant to **Sections 6.02** and **9.05** of the Zoning By-Law were met. The Board made the following specific findings pursuant to said **Section 9.05**:

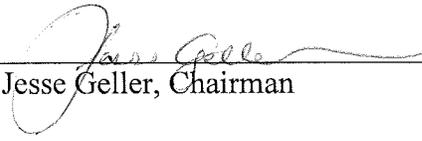
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

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

1. Membership registration and other application print materials for the business operated at the property shall include language indicating off-street parking is prohibited on Davis Court and in the Davis Court lot.
2. Children participating in programs conducted at the premises must be accompanied at all times by a parent or be supervised by another non-staff adult participant. Individual adult-child participants must be of familial relation.
3. Prior to the issuance of a building permit, the applicant shall submit final floor plans to the Assistant Director for Regulatory Planning 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) final floor plans stamped and signed by a registered architect; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of  
The Board of Appeals

Filing Date: 2/3/15

  
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Jesse Geller, Chairman

A True Copy  
ATTEST:

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

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