



**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Jonathan Book  
Christopher Hussey

# *Town of Brookline*

## *Massachusetts*

Town Hall, 1<sup>st</sup> Floor  
333 Washington Street  
Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043  
Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2015-0007  
COOLIDGE CORNER ASSOCIATES, LLC

Petitioner, Lee's Burger Brookline, Inc. applied to the Building Commissioner for permission to increase the capacity of the restaurant from 20 to 35 seats at 1331 Beacon Street. 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 March 19, 2015 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 February 26, 2015 and March 5, 2015 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:

**1331 BEACON ST – INCREASE RESTAURANT SEATING CAPACITY FROM 20 TO 35 in a G-1.75 (CC), General Business district, on March 19, 2015, at 7:30 PM in the 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner: LEE’S BURGER BROOKLINE; Owner: COOLIDGE CORNER ASSOC LLC) *Precinct 10***

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

- 1. Section 6.02, Paragraph 1, Table of Off-Street Parking Regulations**
- 2. 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, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chairman Jonathan Book and Board Members Mark Zuroff and Johanna Schneider. The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Attorney Allen requested that the Board continue the hearing to April 9, 2015. The Board granted Mr. Allen's request for a continuance.

The hearing was continued to April 9, 2015. Present at the continued hearing was Chairman Jonathan Book and Board Members Christopher Hussey and Avi Liss. At the continued hearing, Chairman Book motioned to re-open the hearing. The motion was adopted and the hearing re-opened.

The case was presented by Adam R. Barnosky, Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was the Petitioner Chung Chung, co-owner of Lee's Burger Brookline, Inc.

Chairman Jonathan Book called the hearing to order at 7:30 p.m. Attorney Barnosky stated that the Petitioner proposes to add 15 seats to the Coolidge Corner restaurant for a total of 35 seats.

Attorney Barnosky presented to the Board a background of the property, stating the following: 1331 Beacon Street is located near the corner of Beacon Street and Harvard Street between the AT&T Store and Pure Barre. Mr. Barnosky stated that the restaurant offers quick service food and the additional seats do not require fit out or construction. Furthermore, he stated that the Planning Board voted unanimously in support of the proposal to increase seating.

Mr. Barnosky stated that the Petitioner requests special permit relief pursuant to **Section 6.02, Paragraph 1** of the Zoning By-Law, which requires 1 off-street parking space for every 5 seats within a public assembly use. He stated that there are currently 20 fixed seats and the proposal will increase the total seating to 35 fixed seats and the total required parking for the proposed use is 7 parking spaces. Under **Section 6.02.1.b** of the Zoning By-Law, a change or expansion of a non-residential use in a business district is proposed primarily or entirely within an existing building, the Board of Appeals may, by special permit, waive up to 10 spaces or 50% of the increased requirement. He noted that there is a theoretical parking credit for 4 parking spaces for the existing 20 seats. Therefore, the Petitioner requests a waiver of 3 parking spaces relative to the increase in seating.

Attorney Barnosky discussed relief under **Section 6.02** of the Zoning By-Law whereby a special permit is required under **Section 9.05** of the Zoning By-Law to increase the seating. As for **Section 9.05**, Mr. Barnosky argued: (1) the specific site is an appropriate location because it is located in the G-1.75 District and is surrounded by a mix of commercial and retail tenants; (2) there will be no adverse

effect on the neighborhood where the use will remain a restaurant; (3) no nuisance or serious hazard to vehicles or pedestrians exists where this property is located in the heart of Coolidge Corner, directly across from the Coolidge Corner MBTA stop and the 66 and 86 bus lines; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) development will not have a significant adverse effect on the supply on housing available for low and moderate income people.

Zoning Board of Appeals Member Hussey inquired about the number of seats provided by the previous tenant. Attorney Barnosky stated that the previous restaurant operation, Naked Pizza, provided take out service only.

Zoning Board of Appeals Chairman 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.

Jay Rosa, Planner for the Town of Brookline, delivered the findings of the Planning Board:

**FINDINGS:**

**Section 6.02, Paragraph 1 –Table of Off-Street Parking Regulations**

The applicant must provide 1 parking space for every 5 seats.

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

Where a change or expansion of a non-residential use in a business district is proposed primarily or entirely within an existing building, the Board of Appeals by special permit may waive up to 10 spaces, or up to 50% of the increase requirement, whichever is greater. There is a theoretical parking credit for 4 parking spaces for the existing 20 seats. There is no other off-street parking.

	<b>Required</b>	<b>Proposed by special permit</b>	<b>Relief</b>
<b>Parking Required</b>	3 additional	0 new spaces	Special Permit

Mr. Rosa stated that the Planning Board unanimously supported the proposed restaurant expansion. The Coolidge Corner area is transit rich and pedestrian friendly so there is no anticipated strain on area parking availability as a result of this project. Mr. Rosa stated that the Planning Board recommended approval of the floor plans submitted. Therefore, Mr. Rosa stated that the Planning Board approves the floor plan by Michael Kim Associates dated 1/5/15, subject to the following conditions:

1. An MBTA pass subsidy program shall be offered to all employees.
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.

Zoning Board of Appeals Chairman Book questioned if the Planning Board discussed specific details regarding the percentage or dollar amount of the proposed MBTA pass subsidy program. Mr. Rosa and Attorney Barnosky stated that the Planning Board did not indicate a specific dollar amount. Chairman Book and Board of Appeals Member Avi Liss agreed that a more flexible subsidy requirement should be established without creating a financial burden on the Petitioner.

Board of Appeals Member Liss inquired about the total number of anticipated employees. Mr. Barnosky stated that there will be a total of 9 employees with no more than 4 employees working at a given time. Mr. Liss requested that the applicant suggest a fair subsidy amount that the Board of Appeals may consider. Mr. Barnosky suggested a subsidy amount of \$10 per month for each employee that utilizes the MBTA transit system to go to work. The Board of Appeals Members supported the suggested subsidy amount.

The Chairman then called upon Jay Rosa to deliver the comments of the Building Department. Mr. Rosa stated that the Building Department had no objections to the relief sought under this application and **Section 6.02.1.b** of the Zoning By-Law was specifically adopted to support projects.

such as this. Mr. Rosa stated that the Building Department will work with the applicant to ensure compliance with all building codes.

In deliberation, Zoning Board of Appeals Member Hussey stated favor for the proposal and suggested that the standards for relief are adequately met. Mr. Liss concurred and stated that this business is an asset within the Coolidge Corner area, and worthy of requested parking relief. Chairman Book concurred and stated that modest relief is required. Mr. Book also agreed that the standards for special permit relief under Sections 9.05 and 6.02.1.b of the Zoning By-Law are met as described by Mr. Barnosky.

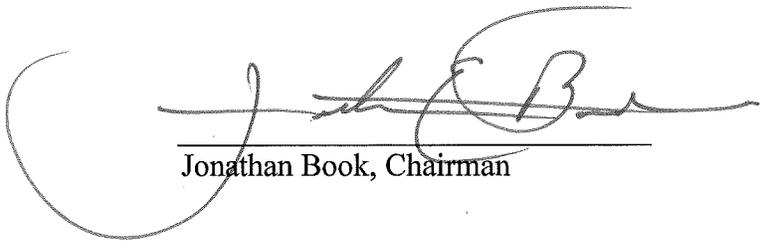
The Board then determined, by unanimous vote that the requirements for relief by special permit from the application of the provisions of Section 6.02.1.b of the Zoning By-Law pursuant to Sections 6.02 and 9.05 of the Zoning By-Law were met. The Board made the following specific findings pursuant to 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.
- e. Development will not have a significant adverse effect on the supply on housing available for low and moderate income people.

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

- 1. An MBTA pass subsidy program of \$10 per month shall be offered to all employees.**
- 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.**

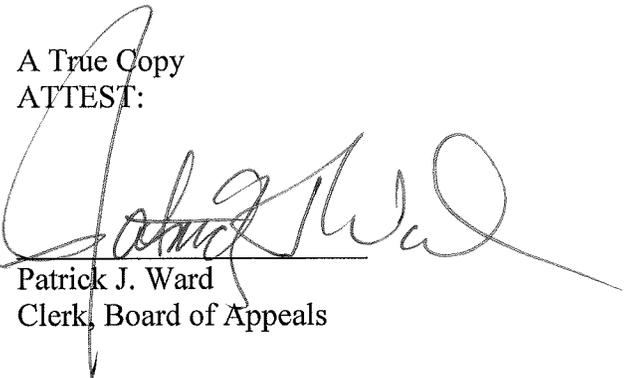
Unanimous Decision of  
The Board of Appeals



Jonathan Book, Chairman

Filing Date: 5/8/15

A True Copy  
ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK  
2015 MAY -8 A 9:23