



BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town of Brookline

Massachusetts

Town Hall, 1st 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. 2015-0043
OWNER: TEN HARVARD REALTY TRUST
ADDRESS: 6 HARVARD STREET

Petitioner, Clover Food Lab, applied to the Building Commissioner for permission to install thirteen (13) seats in the existing take-out establishment located at 6 Harvard 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 October 8, 2015 at 7:00p.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 September 24, 2015 and October 1, 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:

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:

6 HARVARD ST – ADD THIRTEEN SEATS TO CURRENT TAKE-OUT ESTABLISHMENT (CLOVER FOOD LAB) in a G-2.0, General Business, zoning district, on October 8, 2015, at 7:00 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner: Clover Food Lab; Owner: RODMAN DOUGLAS S C/O #10 HARVARD ST REALTY TR) *Precinct 6*

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and additional zoning relief as needed:

- 1. Section 6.02, Paragraph 1: Table of Off-Street Parking Requirements**
- 2. Section 6.02.1.b: Off-Street Parking 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.

*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.***

*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 Christopher Hussey and Avi Liss. The case was presented by Robert L. Allen, Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was Julia Bremner, the construction project manager for Clover Fast Food, Inc.

Chairman Jesse Geller called the hearing to order at 7:00 p.m. Mr. Allen waived a reading of the public hearing notice. Mr. Allen stated that the Petitioner requests parking relief to install seating in the existing restaurant.

Attorney Allen stated that Clover received a Food Vendors License in 2013 to open the 930 s.f. single-story take-out restaurant. Mr. Allen described the proposed floor plan and explained that there would be five barstools at the existing millwork counter and eight seats at a free standing table near a front facing window. He noted that relief is minimal. He emphasized that Clover Food Lab is a neighborhood restaurant that has a lot of foot traffic and is not a destination location. Attorney Allen stated that metered parking along Harvard Street and Washington Street turns over frequently.

Board Member Christopher Hussey questioned why the Assessor's Database lists the property as 8 Harvard Street. Attorney Allen stated that the business address is 6 Harvard Street.

Attorney Allen discussed relief under **Section 6.02, Paragraph 1** and **Section 6.02.1.b** of the Zoning By-Law whereby special permits are required under **Section 9.05** of the Zoning By-Law. As for **Section 9.05**, Mr. Allen argued: (1) the specific site is an appropriate location because the property is immediately surrounded by restaurant, dining, business, and retail establishments with direct access to metered parking, the MBTA green line, and the 66 MBTA Bus Route; (2) there will be no adverse effect on the neighborhood where similar establishments in the immediate area have increased seating (i.e. Hops N Scotch, Pure Cold Press, Fairsted Kitchen, Lee's Burger, and Pon Bistro); (3) there will be no nuisance or serious hazard to vehicles or pedestrians where there is metered/two-hour parking and access to public transportation; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) the development will have no effect on the supply of housing available for low and moderate income people

Attorney Allen stated that in order to issue a final building permit, the Petitioner will need to meet the building code requirements for an ADA compliant bathroom unless the requirements are waived by the Architectural Access Board (AAB).

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

Zoning Board of Appeals Chairman Geller asked if anyone wanted to speak in opposition to the application. No one spoke in opposition to this application.

Lara Curtis Hayes, Senior Planner for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS:

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

Section 6.02.1.b – Off-Street Parking Regulations

G-2.0 District	Required	Existing	Proposed	Finding
Parking Spaces	2.6	0	0	Special Permit *

*Under Section 6.02.1.b the Board of Appeals may waive up to 10 parking spaces, or 50% of increased parking requirements for the expansion of a non-residential use within a business district after considering business operating hours, parking demand, area public parking, and proximity to public transit.

Ms. Curtis Hayes stated that the Planning Board supports the Petitioner’s request for parking relief because the establishment is near rapid transit and bus lines. She stated that many people walk to this local restaurant. The Planning Board recommended approval of the seating plans submitted by SSD Architecture, dated 5/28/2015, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans including seating locations and an ADA compliant restroom or AAB waiver, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) final floor plans stamped and signed by a registered architect; 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Geller requested that Lara Curtis Hayes deliver the findings of the Building Department. Ms. Curtis Hayes stated that the Building Department had no objection to the requested

relief and will ensure that before a building permit is issued, plans for an ADA compliant restroom are submitted or an AAB waiver is obtained.

The Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application. Board Member Christopher Hussey questioned whether the ADA issue was within the Zoning Board of Appeal's jurisdiction. Board of Appeals Chairman Geller stated that he was fine with Condition #1 because it is something the Petitioner is required to do by the Building Department. Board Member Avi Liss said he was also fine with Condition #1.

Attorney Allen stated that he thought this condition was outside the Board of Appeal's jurisdiction. Lara Curtis Hayes stated that the condition was meant to call attention to the issue, but she did not think the Planning Board would be opposed to removing the condition.

Board Member Hussey stated that he was in support. Board Member Liss concurred. Chairman Geller stated support for the project and the requested relief.

The Board then determined, by unanimous vote, that the requirements for the requested special permit relief were met and made the aforementioned modification to the conditions. The Board made the following specific findings pursuant to **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 have no effect on the supply of housing available for low and moderate income people.

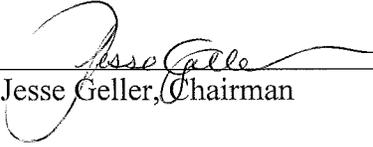
Accordingly, the Board voted unanimously to grant the requested relief subject to the following revised conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans including seating locations, subject to review and approval by the Assistant Director for Regulatory Planning.

2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) final floor plans stamped and signed by a registered architect; 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

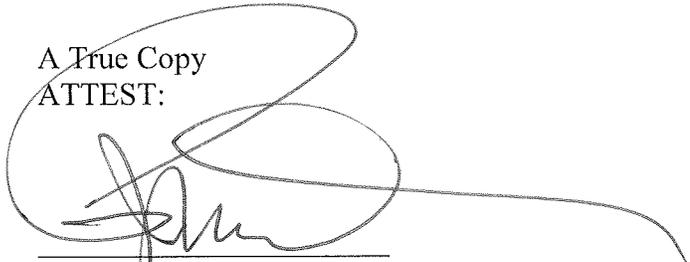
Unanimous Decision of
The Board of Appeals

Filing Date: 11/13/15



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

RECEIVED
TOWN OF BROOKLINE
TOWN CLERK
2015 NOV 13 A 9 36