



BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

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. 2015-0064
OWNER: EMILE HERAIKI
850 COMMONWEALTH AVENUE,
BROOKLINE, MA

Petitioner, Emile Heraiki, applied to the Building Commissioner to convert a full-service gas station to a partial self-service gas station at 850 Commonwealth Avenue. 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 in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals, and fixed January 14, 2016 at 7:00 p.m. in the Selectmen's Hearing Room as the time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, 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 31, 2015 and January 7, 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:

850 COMMONWEALTH AVE – CONVERT USE FROM FULL SERVE GAS STATION TO PARTIAL SELF SERVE GAS STATION in a G-2.0, General Business, zoning district, on January 14, 2016, at 7:00 PM in the 6th Floor Selectmen’s Hearing Room (Petitioner/Owner: HERAIKI, EMILE) Precinct 1

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

- 1. Section 4.07: Table of Use Regulations, Use #25A**
- 2. Section 5.09.2.f: Design Review (Note: No exterior changes proposed)**
- 3. Section 8.02.2: Alteration or Extension**
- 4. Modification, as necessary, of Board of Appeals Case #1759, October 19, 1972 and Board of Appeals Case #2970, July 6, 1989**

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*

Publish: December 31, 2015 & January 7, 2016

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Board Chairman Mark G. Zuroff and Board Members Kate Poverman and Christopher Hussey. Attorney Michael Bozza of Village Law PC, located at 14 Boylston Place, Brookline, MA, presented project details to the Board on the Petitioner’s behalf. Attorney Bozza stated that the Petitioner is seeking special permit zoning relief to convert the use of the current

mobile gas located at 850 Commonwealth Avenue from an entirely full-service facility to a partial self-service facility. The existing convenience store and auto repair garage will remain and no changes to the exterior of the station are proposed.

Attorney Bozza further stated that this proposed conversion is intended to improve customer service. An automatic fire suppression system will also be installed under the existing station canopy hood in accordance with fire codes and local licensing requirements. Attorney Bozza stated that gas station staffing, vehicular access, and hours of operation will not change. Attorney Bozza did state that staffing may be altered as needed in the future if customer patterns dictate such a change. Attorney Bozza confirmed that special permit relief is required to establish the partial self-service gas station use itself as well as design review associated with this conversion.

Board Member Christopher Hussey requested further detail regarding the layout of fueling pumps. Attorney Bozza stated that four separate fueling areas are provided by two individual fuel pumps. The two fueling areas located nearest to the convenience store (south) will be converted for self-service. Attorney Bozza also stated that full-service will be maintained, particularly to assist customers who may have difficulty pumping their own gas.

Board Member Kate Poverman questioned how gas station staffing may be impacted as a result of this conversion to self-service.

Attorney Bozza stated that any staff changes will most likely take the form of reduced hours rather than the elimination of jobs. Attorney Bozza noted that late evening hours may be reduced if found to be unnecessary following the change to partial self-service.

Board Chairman Zuroff called for public comment in favor of, or in opposition to, the Petitioner's proposal.

Emile Gordon stated that he is a Precinct 1 Town Meeting Member and a resident of the Cottage Farm neighborhood. Mr. Gordon stated that he is a long-time customer of the Mobile gas station and knows the facility well. Mr. Gordon stated that he has only experienced positive service and supports the Petitioner's request for zoning relief.

Elias Audy stated the he owns and operates two mobile gas stations in Brookline located on Route 9 and Harvard Street. Mr. Audy stated that he is a relative of the Petitioner and has assisted with overall gas station operations. Mr. Audy stated that he believes the conversion to self-service makes sense from a business standpoint and will make fueling at the site safer and easier for both customers and staff.

No members of the public spoke in opposition.

Board Chairman Zuroff requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board.

FINDINGS

Section 4.07 – Table of Use Regulations, Use #25A

A special permit is required to establish a partial self-service gas station located within the G-2.0 district.

Section 5.09.2.f – Design Review

Design review is required for all gasoline service stations however the Applicant is not proposing any exterior modifications to the existing station/site, which satisfied necessary design review standards through BOA case #2970. Subsequent sign and façade alterations were also approved by the Planning Board accordingly.

Section 8.02.2 – Alteration or Extension

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

Modification – Board of Appeals case #1759, January 16, 1973 and Board of Appeals case #2970, July 26, 1989

No modification of these previous Board of Appeals decisions is required because the Applicant is not proposing exterior modifications to the property. No established conditions explicitly prohibit conversion to self-service and no previous special permit relief was granted for the gas station use itself.

Mr. Rosa further stated that that the Planning Board unanimously supported this proposal to convert the mobile gas station to partial self-service fueling. Mr. Rosa reiterated the fact that design review under Zoning By-Law **Section 5.09** is triggered for this proposed use, however no exterior modifications to the existing station are proposed. Mr. Rosa noted that the Board did consider strategies to alleviate traffic issues at the intersection of Commonwealth Avenue and Amory Street but were ultimately satisfied that current vehicular circulation on the site is effective. The Board also felt that the installation of a required automatic fire suppression system improves overall fire safety. Mr. Rosa stated that the Planning Board recommended approval of the site plan submitted by engineer Edward M. Sabbagh, dated 10/31/88, subject to the following condition:

1. 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Board Chairman Zuroff requested that Deputy Building Commissioner Michael Yanovitch review the findings of the Building Department.

Mr. Yanovitch stated that the Building Department also has no objection to the relief as requested. Mr. Yanovitch stated that this conversion represents a minor change of use and he agreed that the conversion includes significant safety improvements. Mr. Yanovitch also agreed that the conversion to self-service is not anticipated to adversely impact traffic patterns in the

immediate area. Mr. Yanovitch confirmed that the Building Department would work with the Petitioner to ensure compliance with all imposed conditions and building codes if the Board finds that the standard for special permit relief is met.

The Board deliberated on the merits of special permit relief as requested. Board Member Hussey stated that the conversion proposal is minor and sufficiently meets the standards for zoning relief in accordance with Zoning By-Law Sections 9.05 and 5.09. For these reasons, Mr. Hussey was in favor of granting the requested zoning relief.

Board Member Poverman concurred with Mr. Hussey's comments and stated that the proposal is straightforward in terms of the zoning relief required. Ms. Poverman also supported proposed safety improvements.

Board Chairman Zuroff also cited overall safety improvements and believed that the standards for special permit relief are appropriately satisfied.

The Board voted unanimously that the requirements have been met for the issuance of a special permit under Sections 5.09 and 9.05 of the Zoning By-Law, granting relief from the provisions of Sections 4.07, 5.09.2.f, and 8.02.2 of the Zoning By-Law. The Board made the following specific findings pursuant to Section 9.05 of the Zoning By-Law:

- The specific site is an appropriate location for such a use, structure, or condition.
- The use as developed will not adversely affect the neighborhood.
- There will be no nuisance or serious hazard to vehicles or pedestrians.
- Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people

The Board was also satisfied that no modification of prior Board of Appeals case #1759, January 16, 1973 and case #2970, July 26, 1989 is required for the grant of special permit relief as requested.

Accordingly, the Board voted unanimously to grant special permit relief, subject to the following condition:

1. 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

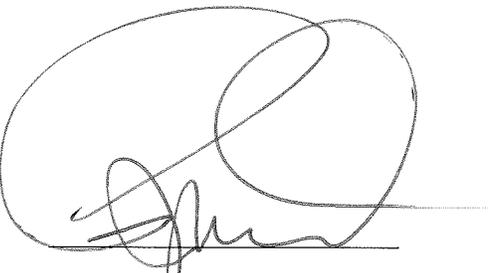
Unanimous decision of the
Board of Appeals

Filing Date: 1/25/16

A True Copy


Mark G. Zuroff, Chairman

ATTEST:


Patrick J. Ward

Clerk, Board of Appeals

RECEIVED
TOWN OF BROOKFIELD
TOWN CLERK
2016 JAN 25 PM 2:14