



Town of Brookline

Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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. 2016-0014
JIN BROOKLINE, LLC
329 HARVARD AVENUE, BROOKLINE, MA

Petitioner, Jin Brookline, LLC, applied to the Building Commissioner for permission to expand restaurant seating from 58 to 108. 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 7, 2016 at 7:00 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 March 24, 2016 and March 31, 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:

329 HARVARD ST – INCREASE RESTAURANT SEATING FROM 58 to 108 in a G-1.75 (CC), General Business, zoning district, on April 7, 2016, at 7:00 PM in Town Hall Room 111 (Petitioner/Owner: Jin Brookline, LLC c/o Jin Hua Xie) *Precinct 8*.

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 deems necessary:

1. **Section 6.02, Paragraph 1: Table of Off Street Parking Regulations**
2. **Section 6.02.1.b: Off-Street Parking Regulations**
3. **Section 8.02.2: Alteration or Extension**
4. **Any Additional Relief the Board May Find Necessary**

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 Jonathan Book. The case was presented by the attorney for the Petitioners, Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance, was the proposed proprietor, Kitty Huang, and the Petitioner's architect, Paul Yu, People Architects, 120 Lincoln Street, Unit 110, Boston, MA 02111.

Attorney Allen stated that the restaurant is located in the G-1.75 Coolidge Corner District. He stated that the Petitioner proposes to increase seating from 58 to 108 and the Petitioner seeks to waive the requirements for offstreet parking of **Section 6.02.1.b** by special permit.

Attorney Allen stated that the Zoning By-Law requires 22 offstreet parking spaces based upon the number of seats proposed for the premises and has a theoretical parking credit for twelve parking spaces. He noted that under **Section 6.02.1.b** of the Zoning By-Law the Board of Appeals may waive up

to 10 parking spaces by special permit after considering a number of factors set forth under **Section 6.02.1.b** of the Zoning By-Law.

In furtherance of the waiver, Mr. Allen then reviewed relief from application of the provisions of **Section 6.02.1.b** of the Zoning By-Law. Mr. Allen noted: (i) with respect to the operating characteristics of the proposed use, including but not limited to a description of the type of business, hours of operation, number of employees, and delivery service requirements, the use will be a restaurant as it was before having between 7 to 10 employees on a given night, and deliveries will be encouraged to be made within the time designated under the Town's By-Law; (ii) with respect to the peak parking demand for the proposed use in relation to the peak parking demand generated by other uses in the area, parking is adequately provided via public transportation, meters, the Center Street parking lot, and the John Street parking lot; (iii) with respect to the need for and provision of employee parking, employees will travel together in a van on a daily basis thus employee parking will not be an issue; and (iv) with respect to the availability and/or shortage of existing public parking and transit facilities in the area, as noted above, adequate existing public parking and public transit is available.

Mr. Allen further noted that the Coolidge Corner district is a highly walkable area.

Mr. Allen then discussed relief under **Section 9.05** of the Zoning By-Law. Attorney Allen stated the following: (1) the specific site is an appropriate location for such use since the Coolidge Corner district, is a walkable area and the location is well-suited for businesses of this kind which will be wholly consistent with the neighboring uses within the district; (2) there will be no adverse effect on the neighbors; (3) there will be no nuisance or serious hazard to vehicles or pedestrians; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use; and (5) there will be no effect on the supply on housing available for low and moderate income people.

Attorney Allen stated that the Petitioner has worked with neighbors to address concerns related to trash removal and delivery truck service times. He stated that the proposed restaurant will be located

next to a condominium complex (Bradford Terrace). The occupants of 329 Harvard Avenue and Bradford Terrace currently share use of a right of way for access to the rear of the properties. He stated that the Petitioner will adhere to the current regulations for licensing in Brookline.

Zoning Board of Appeals Chairman Geller asked if the existing lease has provisions for waste disposal. Attorney Allen stated the existing lease provides for the Petitioner to have a dumpster within an area of the property. Board Member Hussey questioned how dumpster trucks access the alleyway. Attorney Allen stated that the process includes backing into the alleyway and that the Bradford Terrace condominiums are protected by bollards to prevent the condominium building from being struck.

Chairman Geller asked if anyone was present to speak in opposition of the petition. Maya French, an abutting neighbor, stated that the alley is an easement area for use by the Bradford Terrace residents. She stated that there are 13 units that face the alleyway and that she has concerns about inadequate trash disposal, safety and noise. She also spoke on behalf of another abutting neighbor, Emanuel Howard, stating that he is concerned about parking in the alleyway, which is detrimental to the neighborhood. Ms. French stated that she also has a concern about trucks accessing the alleyway and hitting the Bradford Terrace condominium building. Ms. French also submitted a letter in opposition to the application from another Bradford Terrace resident concerned about use of the alley.

Mahdavi Prakash commented on concerns with deliveries and removal of trash from the alleyway.

Chairman Geller questioned whether the proposed seat increase will also result an increase in the number of times trash pickup and deliveries access the alleyway.

Attorney Allen stated that trash will be removed once daily as was done for the prior restaurant operator. He stated with respect to deliveries, an increase in the number of trucks accessing the alleyway is not anticipated and that van style vehicles will be used with more frequency. Mr. Allen noted that the petitioners met with the neighbors and will provide the neighbors with the contact information and phone number of the restaurant Manager. Additionally, the petitioner will try to coordinate trash

removal from the alley with the neighboring restaurant (Zaftigs) and will include restrictions on the times for deliveries in its vendor contracts.

Jay Rosa, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board and the Building Department:

FINDINGS:

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

Section 6.02.1.b – Off-Street Parking Regulations

G-1.75 District	Required	Existing	Existing Parking Credit	Proposed	Finding
Parking Spaces	21.6 <i>(1 space per 5 seats)</i>	0	11.6	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, whichever is greater, 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.*

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a pre-existing nonconforming structure (parking).

Mr. Rosa stated that the Planning Board had no objection to the proposal. Coolidge Corner is a highly walkable area that is serviced by multiple forms of public transportation. The Planning Board noted that metered street parking and municipal parking lots are located in close proximity to the subject property. The Planning Board suggested that the requested waiver of ten designated parking spaces is not anticipated to place undue additional burden on current area parking availability. Mr. Rosa stated that the Planning Board does have concerns regarding increased trash generation and delivery requirements associated with this seating increase and urged the petitioner to work with other businesses and neighbors.

Therefore, the Planning Board recommended approval of floor plans submitted by People Architects, dated 12/17/2015, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall schedule a meeting at the site with at least 10 day notice to the building’s management company, other businesses using the rear alley for trash and/or deliveries, neighbors abutting the alley, and the Assistant Director for

Regulatory Planning to discuss the proposed use of the alley for deliveries, trash/grease removal and parking.

2. Prior to the issuance of a building permit, the applicant shall submit to Assistant Director of Regulatory Planning for review and approval a final site plan indicating dumpsters and employee parking and final floor plans.
3. Prior to the issuance of a building permit, the applicant shall submit to the Director of Public Health and the Assistant Director of Regulatory Planning for review and approval a trash and grease plan, including location of dumpsters and other containers, name of company (ies) servicing the trash/grease pickup, and hours of pick-up.
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) a final site plan showing dumpster location and employee parking, 2) floor plans including 108 restaurant seats stamped and signed by a registered architect; 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Rosa stated that he believes that Condition #1 has been satisfied.

Mr. Rosa on behalf of the Building Department stated that the Building Department has no objections to the proposal. He stated that the Building Department determined that **Section 6.02.1.b** is applicable in this situation. The Building Department also noted that the parking credit is appropriately applied as stated by Attorney Allen.

During deliberation, Chairman Geller asked Attorney Allen whether the stated conditions are agreeable. Mr. Allen stated that Condition #2 and Condition #3 would be best addressed by the Planning Staff submitting a letter to the Board of Selectman expressing the aforementioned conditions.

Chairman Geller stated that he is in favor of granting relief and that application of the parking credit is consistent with how this provision has previously been applied. Board Member Hussey stated that he is favorable to a condition requiring submittal of the final site plan, but is otherwise agreeable to this petition.

Board Member Book stated that he is supportive of the petition. He stated that an increase in seats is not directly correlative to an increase in trash.

The Board then determined that the requirements for a special permit from application of the provisions of Section 6.02, Paragraph 1, and Section 8.02.2 of the Zoning By-Law pursuant to Section 6.01.2.a 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 any 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 conditions:

- 1. Prior to the issuance of a building permit, the applicant shall submit to the Assistant Director of Regulatory Planning for review and approval a final site plan indicating dumpsters and employee parking and final floor plans.
- 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) a final site plan showing dumpster location and employee parking, 2) floor plans including 108 restaurant seats stamped and signed by a registered architect; 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

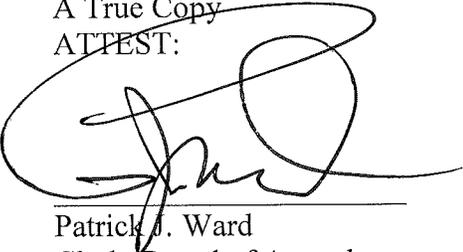
Unanimous Decision of
The Board of Appeals

Filing Date: 5/26/16



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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