



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

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0053
CEE CEE MAHER
85-87 HARVARD STREET, BROOKLINE, MA

Petitioner, Cee Cee Maher, applied to the Building Commissioner for permission to convert retail space into a health club. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the property affected was that shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed September 15, 2016, at 7:15 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 September 1, 2016 & September 8, 2016 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:

85-87 HARVARD ST – CHANGE OCCUPANCY TO FITNESS STUDIO in a G-2.0 (General Business) Business District, on September 15th, 2016 at 7:15pm in 6th Floor Selectmen’s Hearing Room (Petitioner/Owner: 75-87 Harvard Street LLC) *Precinct 4*

1. **Section 4.07, Table Of Use Regulations: Use #18 Private Club Or Lodge**
2. **Section 6.02 Paragraph 1, Table Of Off-Street Parking Space Requirements**
3. **Section 6.02.1.B: Off-Street Parking Space Regulations**
4. **Any Additional Relief The Board May Find Necessary**

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:

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 programs and services of the Town of Brookline are invited to make their needs known to Lloyd Gellineau, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone (617) 730-2328; TDD (617) 730-2327; or e-mail at llgellineau@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 Johanna Schneider and Kate Poverman. Planner and Zoning Coordinator, Ashley Clark, was also present at the hearing. The case was presented by the attorney for the Petitioner, 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 Petitioner, Cee Cee Maher, along with her husband Jason Georgitis, and a representative of the property landlord, Mount Vernon Company.

Chairman Book called the hearing to order at 7:15 pm. Attorney Allen waived the reading of the public hearing notice.

Attorney Allen stated that the subject property is located at the corner of Harvard Street

and Aspinwall Avenue, and the proposed storefront for the health club would be in the corner unit where Phillips TV was previously located. Attorney Allen said Mount Vernon has significantly improved the overall exterior of the building, and they are now working to improve the consistency in the signage and commercial storefronts. Attorney Allen said Cee Cee Maher owns Benefitness Health Club, which is currently located across from the proposed building at 62 Harvard Street next to the Pierce School, and has been there since 1979. Attorney Allen said that while Benefitness would like to remain in their current location, outside pressure and interest from the Brookline Schools in the health club's current location has resulted in non-renewal of Benefitness' lease and Ms. Maher needing to find a new location. Attorney Allen said the Phillips TV location has been vacant for some time, and combined with the basement and the neighboring storefront, there will be enough space for the gym.

Attorney Allen said special permit relief is needed under two sections of the Zoning By-Law: a special permit is required to establish a health club with more than 2,500 s.f., and a waiver for parking is needed since space is being added in the basement. Attorney Allen said the space in the basement was used by both Sunflower Cleaners and Phillips TV, but not necessarily for the public. Attorney Allen reviewed the total parking requirement for the health club for 13 spaces, noting that there is a theoretical parking credit of eight spaces from the previous use. Attorney Allen said that the health club will be able to use three spaces in the back alleyway, though in the winter time there may be room for only two. Attorney Allen asked the Board to waive six parking spaces, which would be half of the total parking requirement. Attorney Allen said there are a number of parking meters on the street. Attorney Allen said the club is essentially just moving across the street, and a significant number of clientele walk to the club already.

Attorney Allen discussed special permit relief under **Section 9.05** of the Zoning By-Law arguing: (1) the specific site is an appropriate location for a health club, and there are many other health clubs in the Brookline Village neighborhood; (2) there will be no adverse effect on the neighborhood; (3) there will be no nuisance or serious hazard to vehicles or pedestrians as the site is in a walkable neighborhood and easily accessible by transit and by bicycle; (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 on housing available for low and moderate income people.

Mr. Allen said he would like to keep Cee Cee Maher and Benefitness in the Brookline Village neighborhood. Attorney Allen submitted to the Board 170 signatures of people in support of the proposed relocation.

Mr. Allen said he would also like to discuss the recommended conditions from the Planning Board. Chairman Book asked Mr. Allen to review his concerns regarding the conditions. Mr. Allen said the applicant only has a plot plan, not a surveyed site plan, for the property, which would be required under the recommended condition #2, and since all of the improvements to the property will be interior to the building, he does not think a surveyed site plan is necessary. Board Member Schneider asked Attorney Allen to clarify whether he would like to delete recommended condition #2 in its entirety. Attorney Allen said the client still expects to submit building elevations for the first floor, which is the only area of the building that will see changes, so the applicant requests just the first clause of condition #2 to be removed.

Board Member Poverman asked where people currently park for the health club. Attorney Allen said there is a small lot next to the Health Department with six spaces. Board Member Poverman asked if those spaces will be available at all for this new location. Attorney

Allen said no. Board Member Poverman asked if the employees use those spaces. Cee Cee Maher said a couple of her employees, as well as herself, use a few of the spaces in the lot. Cee Cee Maher said the tandem spaces in the alley behind the building will be used for employees of the health club in the new location. Board Member Poverman said there is nothing that can be done about the parking, and she does not have a problem with the request for parking relief.

Board Member Poverman asked where people could park bicycles if they travelled by bike to the health club. Attorney Allen said that hasn't been determined yet, but Mount Vernon is working on addressing that issue. The representative from Mount Vernon said they are considering possible locations for bicycle parking, as there will be inside storage for bicycles owned by residents in the building. A possible location for bike parking may be next to the building by the Brookline Spa. Cee Cee Maher said most of the health club members live within a three-mile radius of the club and walk.

Chairman Book asked if anyone would like to speak in favor of the requested relief. Karen (last name unknown), a resident of Babcock Street, City of Boston said she knows there are tenants who live above the storefront, and wondered if they will be treated well after the health club has moved in. Karen also asked what the applicant would do to distinguish this health club from other health clubs, suggesting the club give back to the community in some way. Board Chairman Book thanked Karen for her questions, noting that while her questions were important, they were not related to the requested zoning relief, which is the purpose of this public hearing.

Lorraine Goldstein, 15 Greenough Street, said she has been a member of Benefitness for many years, the club is a wonderful asset to the community and for the women in the

community, and this is a great opportunity for Ms. Maher to improve the club facilities beyond what was possible in the current location.

Board Chairman Book asked if anyone would like to speak in opposition to the application. No comment was offered.

Board Chairman Book acknowledged a number of signatures in support of the requested zoning relief have been submitted by Attorney Allen and requested that they be entered into the record.

Ashley Clark delivered the findings for the Planning Board stating: The Planning Board supports the conversion of the retail space into a gym as it will improve this currently vacant corner storefront at a prominent intersection in Brookline Village. The Board believes there would be adequate on-street parking for this new gym location and also takes into account that gym goers are more likely than average to walk or ride a bicycle to the site. Public transportation is also available via the Harvard Street bus and the Brookline Village MBTA rapid transit stop is nearby. Therefore, the Planning Board recommends approval of the site plan and floor plans labelled "Benefitness Health Club" by Mark Armstrong Architect, LLC, dated 6/21/16, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations indicating all dimensions and materials subject to the review and approval of the Assistant Director of Regulatory Planning.
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 stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered architect; and 3)

evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Book requested Ms. Clark deliver the findings of the Building Department. Ms. Clark stated that the Building Department had no objection to the relief as requested, and should relief be granted, will work with the Petitioner to ensure compliance with the conditions as well as the state building code.

In deliberation, Board Member Poverman said the health club will be a nice addition in the proposed location, and it will be a positive improvement to have that corner tenanted. Board Member Poverman said she is in favor of granting the requested relief.

Board Member Schneider said she would only add that the health club is in the best position to know what their parking needs are, and she would support granting a waiver of six spaces as requested by the applicant. Board Member Schneider said she would vote in favor of granting the requested relief with the recommended conditions, with a modification to condition #2, removing the requirement for a surveyed site plan.

Chairman Book agreed, noting that most properties in Brookline Village do not have parking. The location is well served by public transit, and there are public parking lots nearby and numerous parking meters along Harvard Street. Board Chairman Book noted that Brookline Village is a walkable neighborhood, which should be encouraged. Board Chairman Book said he is also glad to see the corner storefront tenanted, especially as it is in such a prominent location. Board Chairman stated that the requirements for the grant of a special permit under By-Law **Section 9.05** were satisfied.

The Board then determined, by unanimous vote that the requirements for a special permit for **Section 4.07, Table of Use Regulations, Use #18** and **Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements** of the Zoning By-Law pursuant to **Sections 6.02.1.b**

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 no 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.

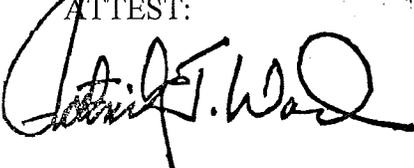
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1. Prior to the issuance of a building permit, the applicant shall submit final plans and elevations indicating all dimensions and materials subject to the review and approval of the Assistant Director of Regulatory Planning.
- 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 building elevations 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: 10/5/16


Jonathan Book, Chairman

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals