



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
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Patrick J. Ward, Clerk

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0060
WORTHY KITCHEN BROOKLINE, LLC
200 WASHINGTON STREET, BROOKLINE, MA

Petitioner, Worthy Kitchen Brookline, LLC, applied to the Building Commissioner for permission to convert space to a 76 seat restaurant. 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 November 3, 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 October 20, 2016 and October 27, 2016 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

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:

Notice of Hearing

200 WASHINGTON STREET – FIT OUT SPACE FOR A 76 SEAT RESTAURANT in A G2.0 (General Business) Business District, on NOVEMBER 3, 2016 at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: KURT LESSARD, WORTHY GROUP) *Precinct 6*

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 Space Requirements
2. Section 6.02.1.b: Off-Street Parking Space Regulations
3. 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 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, this Board held a public hearing. Present at the hearing was Chairman Mark G. Zuroff and Board Members Christopher Hussey and Kate Poverman. Present at the hearing was Zoning Coordinator Ashley Clark. 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.

Attorney Allen stated that the proposed restaurant will be located in the G-20 District. Attorney Allen stated that 200 Washington Street is a retail space located in the Brookline Village neighborhood between White Place and Davis Court. He stated that 200 Washington Street previously, served as Japan Village Mart. He stated that the retail space is part of a one-story building of similar retail spaces. Mr.

Allen stated that the Petitioner proposes a 76 seat restaurant and seeks to waive the requirements for off-street parking of **Section 6.02.1.b** by special permit.

Attorney Allen stated that the Zoning By-Law requires fifteen off-street parking spaces based upon the number of seats proposed for the premises and that the location has a theoretical parking credit for six parking spaces. Attorney Allen stated that the Petitioner seeks to waive the nine additional parking spaces by special permit. 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 the 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 similar to neighboring uses in the G-2.0 District, 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, and neighboring parking lots; (iii) with respect to the need for and provision of employee parking, employees will travel using the local MBTA options; 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 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 Brookline Village neighborhood is a highly walkable area and is well suited for businesses of this kind and will be wholly consistent with the neighboring uses in the G-2.0 District; (2) there will be no adverse effect on the neighborhood; (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; (5) there will be no effect on the supply on housing available for low and moderate income people.

Ashley Clark, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board.

FINDINGS

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

	Required	Existing	Allowed by Special Permit	Finding
Parking	15*	0	5	<u>Special Permit</u>

** Under Section 6.02.1.b - Off-Street Parking Regulations When 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 any increased requirement, whichever is greater.*

*The G-2.0 district requires one parking space per every five seats in a restaurant. The proposed restaurant has 76 seats which require 15 parking spaces. The previous use of the space was retail. Retail requires one parking space per 350 square feet of space which required six parking spaces for the 2,041 square foot space. As a result, the space has a theoretical parking credit of six spaces bringing the required number of spaces to 9. The applicant is seeking a waiver for nine parking spaces.

Ms. Clark stated that the Planning Board is supportive of the new restaurant space at this location as it will replace a currently vacant storefront within Brookline Village and add vitality to the business district. Ms. Clark stated that the Planning Board believes that there would be adequate on-street parking for this location and considered the opportunities to access this location by public transportation including the bus and the MBTA. Therefore, the Planning Board recommended approval of the site plan and floor plans labelled “200 Washington Street Brookline” by TLH Consulting, dated 7/1/16, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final floor plan indicating the total number of seats proposed subject to the review and approval of the Assistant Director of Regulatory Planning.
2. The restaurant’s management shall implement an employee T-pass program, where management subsidizes at least 50 percent of the cost of monthly subway and bus T-passes for all of the restaurant’s employees.
3. 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 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.

Mr. Yanovitch stated that the Building Department is supportive of the proposal. Mr. Yanovitch and will work with the Petitioner to ensure compliance, should relief be granted.

During deliberation, Chairman Zuroff stated that he is supportive of the proposal. Board Members Hussey and Poverman concurred with his statement.

The Board then determined that the requirements for a special permit from application of the provisions of **Section 6.02, Paragraph 1** 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**:

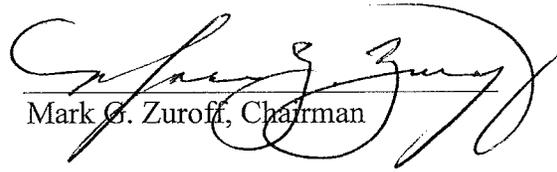
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the 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 revised conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final floor plan indicating the total number of seats proposed subject to the review and approval of the Assistant Director of Regulatory Planning.
2. The restaurant's management shall implement an employee T-pass program, where management subsidizes at least 50 percent of the cost of monthly subway and bus T-passes for all of the restaurant's employees.
3. 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 floor 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.

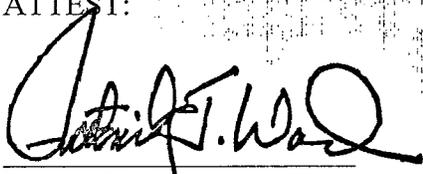
Unanimous Decision of
The Board of Appeals

Filing Date: 11/21/16


Mark G. Zuroff, Chairman

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals