



BOARD OF APPEALS
Diane R. Gordon, Co-Chair
Harry Miller, Co-Chair
Bailey S. Silbert

Town of Brookline

Massachusetts

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Patrick J. Ward, Secretary

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. BOA 070048

Petitioner, 1285 Beacon LLC, applied to the Board of Appeals to amend Special Permits # 030062, 050012 and 050037 to allow for restricted public overnight parking as requested by the community.

On May 4, 2007 the Board of Appeals met and 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 September 27, 2007 at 7:30 p.m. in Hunneman Hall, Main Library, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, 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 September 6 and 13, 2007 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice is as follows:

TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Pursuant to M.G.L., C.39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: 1285 BEACON LLC

Location of Premises: 1285 BEACON ST BRKL

Date of Hearing: **09/27/2007**

Time of Hearing: **07:30 p.m.**

Place of Hearing: **Main Library, Hunneman Hall, 2nd fl.**

A public hearing will be held for a special permit and/or variance from:

- 1) Design Review, Special Permit Required.**
- 2) 5.09.e, Plan Revisions; Board of Appeal Public Hearing and Modifications Required.**
- 3) Board of Appeals Decisions:**
 - Case #030062 dated June 1, 2004.**
 - Case #050012 dated June 29, 2005.**
 - Case # 050037 dated August 9, 2005.****Modifications Required.**

Of the Zoning By-Law at **1285 BEACON ST BRKL.**

Said Premise located in a **G-1.75** District.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

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 the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

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Present at the hearing was Chair, Diane Gordon and Board members Bailey Silbert and Larry Kaplan. The case for the petitioner was presented by Gary Hendren AIA, of Hendren Design Associates, 119 Braintree Street, Suite 315, Boston, MA 02134.

The Chair made a disclosure regarding some prior legal involvement with the petitioner, Nicholas Heras. She expressed her discomfort at sitting on the Board for the hearing. She was advised that no-one else was available to sit on the Board and since time was of the essence she agreed to sit, providing it was acceptable to the petitioner. Mr. Heras in a letter to the Zoning Administrator dated 26 September stated that "... I am familiar with Diane Gordon from a previous real estate project but have no objection to her being on the review board for the purpose of reviewing the current dual use parking proposal for 1285 Beacon Street project". The Chair then asked the other Board members whether they had any issue regarding her sitting on the case and they indicated that they did not.

Mr. Hendren described the site and neighborhood. He said 1285 Beacon Street was previously a Gulf Service Station at the corner of Beacon and Charles Street with three curb cuts, two on Beacon and one on Charles Street, which is one way toward Beacon Street. To the west and north is the Coolidge Corner business district. The main post office building is the adjacent building to the west, and a temple adjacent to the south; generally, to the east and south are mixed uses with residential apartment buildings, medical office buildings, and two-family residences. Mr. Hendren stated that the petitioner is seeking a modification of a prior Board of Appeals decision in order to devote 49 parking spaces to overnight parking for vehicles after business hours. The building currently under construction will have two levels of under ground parking (28 spaces in the lower level, 21 spaces in the upper level) and will have three retail tenants, whose parking requirements and hours of operations are listed below:

Retail Tenant	Size (s.f.)	Required Parking	Hours of Operation
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Bodyscapes (health club)	12,000s.f.	20 Spaces	M-F 6am-10pm, Sat-Sun 7am-7pm
Staples Copy & Print Shop	4,800 s.f.	14 Spaces	M-F 7am-9pm, Sat 9am-9pm, Sun 10am-6pm
Undetermined	4,200 s.f.	12 Spaces	Unknown

Total Required Parking	46 Spaces
Handicapped Parking	3 Spaces
Total Parking Provided	49 Spaces

Mr. Hendren said that they are proposing to lease all 49 spaces for overnight parking after the hours of operation for the retail businesses in the building. After hours parking access will be controlled by remote transmitter to allow parking lessee's access through swing gates at the street level and the first garage sublevel. Cars will be able to exit the garage at any time by motion sensor. Parking spaces will be numbered and the garage will be monitored with closed-circuit video cameras to identify and remove unauthorized vehicles parking in the garage. He said that the project is approximately 90% complete, that when they were previously before the Board of Appeals there was a discussion regarding dual-use parking to provide parking for the residents at night and the owner has decided to seek the appropriate relief for the dual-use parking. Since the building is in the final stage of construction, Mr. Hendren stated now would be the time to get this relief so the necessary gates could be installed before the building is done. Mr. Hendren stated that the dual-use parking issue was brought up by the community at previous hearings but since they didn't know what tenants would occupy the building, decided to wait to seek relief at this time. He said that a health club will occupy the second floor of the building while an office copy operation will occupy all but 4,000 s.f. of the first floor. He said that the 4,000 s.f. space is not yet leased. Mr. Hendren stated that since the Planning Board hearing and the complications around using both floors for community parking, the owner decided to use only the lower level, 28 spaces for dual-use parking. Mr. Hendren said that he had sat with both tenants to ascertain their hours of operation and the ebb

and flow of their patronage and it was felt that even though the health club opens at 6:00 a.m., it is not heavily used at that time. He said that their primary hours of usage are between 4:00 and 7:30 at night. Also, the copy center does not have a lot of morning use. Their traffic comes between 12:00 p.m. and 1:30 p.m. and again from 4:30 p.m. to 6:00 p.m. It was determined that if the parking were restricted to the neighbors after the close of business at 10:00 p.m., they would either break the rules or not use the parking. Therefore, the lowest level would be restricted to neighborhood parking from 7:00 p.m. to 8:00 a.m. and the upper level which has 21 spaces would be tenant parking only from 6:00 a.m. to 8:00 a.m. and again from 7:00 p.m. to 10:00 p.m. During the hours of 8:00 a.m. to 7:00 p.m., tenants are assigned spaces on both garage levels. During the day, all spaces are full retail parking therefore they would meet the parking requirements of the by-law, 49 spaces. Mr. Hendren explained how the parking program would be monitored. He said there would be two systems employed, one would be the use of closed circuit TV throughout the garage for both security and monitoring of the program and a building attendant will tour the area initially four times per day and if detected, repeat offenders would be given warning stickers for the first and perhaps second offence but repeat offenders will have their monthly parking privileges revoked. If people come to park and leave the premises, they will be towed. Residential parkers will be issued a transmitter, that will operate the roll-down security gate at street level which is closed after business hours and there are two swing gates on the ramp which will be opened by the same transmitter at the appropriate level. He said that the transmitters could be easily be reprogrammed and security will get a monthly print out of when people come and go. Mr. Kaplan then asked about the ten neighbors that enjoyed parking privileges on the previous use of the land, a

gas station. Mr. Hendren replied they could try to contact these people through old records to let them know about the program.

The Chair asked whether anyone would like to speak in favor or in opposition to the proposal. Ms. Myra Trachtenberg of 45 Longwood Avenues stated that she had a few questions. She asked how many monthly parkers would be accommodated and Mr. Hendren responded, 28. She asked whether any attempt would be made to provide parking for residents in the vicinity of the facility. Mr. Hendren responded that they have received many calls that he didn't believe they would have any problem filling the spaces. Mr. Kaplan clarified Ms. Trachtenberg's concern that priority should be given to local residents. Mr. Hendren replied that given the nature of the parking, at night that they would most likely be local. Ms. Ponny Katz of 55A St. Paul Street asked about the access to the garage from Charles Street. The Chair stated that the access issue was part of a previous decision and was not before the Board. Mr. Hendren responded by saying that Charles Street would be made wider from Beacon to the end of the property line to accommodate a dedicated lane for traffic off Beacon to use the facility. He said that a "do not enter" sign will be installed at the property line to prevent motorists from continuing on Charles to access Sewall Avenue.

Lara Curtis, Planner, said that the Planning Board is pleased the applicant has chosen to propose the leasing of overnight parking spaces at this location, as it was recommended by the Board during the initial review for this project. However, the Planning Board has concerns with certain aspects of this proposal. It is unclear how the applicant will ensure that vehicles parking overnight will only enter/exit the garage during designated times, so as not conflict with the parking demand during operating hours of the businesses in the building. The applicant has stated that spaces will be

numbered and closed-circuit video cameras will be employed to identify unauthorized vehicles, but it has not been indicated who will monitor the parking lot and with what frequency. The applicant should submit details explaining how the garage will be monitored. Ms. Curtis said that the Board feels that as proposed, it will be difficult to ensure that vehicles leasing overnight spaces are not parked during the operating hours of the businesses in the building. Inevitably, a number of vehicles parked overnight will still be parked in the garage at the start of business hours in the morning or prior to businesses closing at night. In order to mitigate parking demand issues due to overlap in usage times, the Board recommends overnight leased parking be limited to the 28 spaces in the lower level of the garage, from the hours of 7 pm to 8 am, 7 days a week. The Board also noted that retail tenants in the building may change over time, and a dual-use parking scenario that is appropriate for the current uses and hours of operations may not work for future tenants. In order to ensure the dual-use parking scenario is compatible with future mixes of retail tenants in the building, the Planning Board recommends a time limit of 2 years, subject to renewal, be attached to the relief for dual-use parking. Additionally, as this case is a modification of BOA case #050037, the conditions of the previous decision should be incorporated into the final decision. Therefore, the Planning Board recommends approval of this proposal for dual use parking in an underground parking structure, subject to the following conditions, and subject to the same conditions as the previous modification decision (#050037, dated 8/09/05):

- 1. The applicant shall submit information explaining how the garage will be monitored to ensure overnight vehicles are not parked during business hours, subject to the review and approval of the Planning Board.**
- 2. Overnight leased parking shall be limited to the 28 spaces on the lower level of the garage, and shall be limited to the hours of 7 pm to 8 am, 7 days a week.**
- 3. Relief for dual-use parking shall expire two years from the date of this decision, and may be renewed by the Board of Appeals.**

Conditions from Board of Appeals Decision #050037

4. Final design, including façade details, colors, materials, rooftop utilities, and garage vents, shall be subject to the review and approval of the Planning Board before a building permit is issued.
5. Final parking area layout, including bicycle spaces, shall be subject to the review and approval of the Planning Board.
6. Street tree planting on Charles and Beacon Streets shall be required subject to the review and approval of the Commissioner of the Department of Public Works and Street Tree Planting Committee.
7. Final design review of the two-way portion of Charles Street from Beacon Street, subject to the review and approval of the Planning Board and the Commissioner of the Department of Public Works.
8. Traffic mitigation measures, including appropriate signage, crosswalk, new parking meters in front of the building, a visible warning at the garage entry, a subsidy of MBTA passes for employees, and police details, if determined necessary by the Police Chief, shall be required.
9. A construction management plan, including parking locations for all construction workers and staging areas for materials and equipment, shall be submitted for review and approval by the Director of Transportation and Engineering before a building permit is issued.
10. Prior to the submission of construction drawings to the Building Commissioner for purposes of obtaining a building permit, the applicant shall submit to the Director of the Planning and Community Development Department for review and approval for conformance to the Board of Appeals decision: 1) a final site plan, including location of utilities, stamped and signed by a registered engineer or land surveyor, 2) a final landscaping plan, including fencing and grading, stamped and signed by a landscape architect, and 3) building elevations stamped and signed by a registered architect.
11. No trucks shall make deliveries to the site between the hours of 7:00 a.m. and 10:00 a.m., except so called "overnight couriers" including, but not limited to, Federal Express, UPS, DHL and USPS. No truck in excess of 30 feet, including the cab of the truck, shall make deliveries to the site at any time.
12. After the applicant has received a building permit free from all appeals within thirty (30) days of issuance, it shall be obligated to reimburse the Town for a Coolidge Corner Neighborhood study up to the maximum amount of \$40,000.
13. All area residents currently utilizing the site for overnight parking shall be entitled to \$100 a month for a period of 12 months as a subsidy to whatever new parking arrangements the residents make. Such subsidies shall commence on the day that such residents can no longer park at the site.

The Chair then called on Frank Hitchcock representing the Building Department. Mr. Hitchcock reviewed the proposal for the Board and the sections of the by-law pertaining to the proposed use. He said that relief was required under Section 6.02.1.c, Dual Use parking and also under Section 5.09.2(e), plan revisions, of the bylaw. Mr. Hitchcock said that the Building Department has no objection to the proposal, no objection to the relief nor to the modifications required and no objection to the conditions recommended by the Planning Board.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits under Sections 6.02.1.c and 5.090.2(e) of the Zoning Bylaw. The Board makes the following 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. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Therefore, the board voted unanimously to grant all the Special Permit relief and modify Decisions in case #030062, #050012 and #050037 with the following conditions:

1. The applicant shall submit information explaining how the garage will be monitored to ensure overnight vehicles are not parked during business hours, subject to the review and approval of the Planning Board.
2. Overnight leased parking shall be limited to the 28 spaces on the lower level of the garage, and shall be limited to the hours of 7 pm to 8 am, 7 days a week. The petitioner shall make best effort to locate those residents whose parking was displaced when the prior use was demolished and notify them of the available parking and parking priority shall be given to displaced and other residential neighbors.
3. Relief for dual-use parking shall expire two years from the date of this decision, and may be renewed by the Board of Appeals.
4. Final design, including façade details, colors, materials, rooftop utilities, and garage vents, shall be subject to the review and approval of the Planning Board before a building permit is issued.
5. Final parking area layout, including bicycle spaces, shall be subject to the review and approval of the Planning Board.
6. Street tree planting on Charles and Beacon Streets shall be required subject to the review and approval of the Commissioner of the Department of Public Works and Street Tree Planting Committee.
7. Final design review of the two-way portion of Charles Street from Beacon Street, subject to the review and approval of the Planning Board and the Commissioner of the Department of Public Works.

8. Traffic mitigation measures, including appropriate signage, crosswalk, new parking meters in front of the building, a visible warning at the garage entry, a subsidy of MBTA passes for employees, and police details, if determined necessary by the Police Chief, shall be required.
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Unanimous Decision of

The Board of Appeals



Diane Gordon

Filing Date: November 13, 2007

A True Copy:

ATTEST



Patrick J. Ward

Clerk, Board of Appeals

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