



BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

Town of Brookline

Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2014-0083
DELLE REALTY TRUST

Petitioner, D2 Restaurants LLC, applied to the Building Commissioner for permission to construct a roof deck with 36 seats. 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 February 5, 2015 at 7:30p.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 **January 15, 2015 and January 22, 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, MA on a proposal at:

1306 BEACON ST – CONSTRUCT A SEASONAL ROOF DECK FOR AN ADDITIONAL 36 SEATS AT HOPS AND SCOTCH, in a G-1.75 (CC), General Business district, on February 5, 2015, at 7:30 PM in the 6th Floor Selectmen's Hearing Room (Petitioner: D2 RESTAURANT LLC; Owner: Delle Realty Trust c/o James S. Krasnow) *Precinct 8*

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

- 1. Section 5.09.2.a: Design Review**
- 2. Section 5.43: Exceptions to Yard and Setback Regulations**
- 3. Section 5.70: Rear Yard Requirements**
- 4. Section 6.02, Paragraph 1: Table of Off-Street Parking Space Regulations**
- 5. Section 6.02.1.b: Off-Street Parking Space Regulations**
- 6. Section 8.02.2: Alteration or Extension**

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 Jonathan Book and Board Members Christopher Hussey and Johanna Schneider. The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen, Jr. LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts 02445. Also in attendance was Hops N Scotch co-owner Darren Tow and the architect Piya Wiwatyukhan, Sousa Design, 81 Boylston Street, Brookline, MA 02445.

Chairman Jonathan Book called the hearing to order at 7:35 p.m. Attorney Allen stated that the Petitioner proposes to construct a seasonal roof deck with an additional occupancy of 36 seats.

Attorney Allen presented to the Board a background of the Petitioner and the proposal, stating the following: Hops N Scotch Bar & Grill (“Hops N Scotch”) is a restaurant-bar located on Beacon

Street in the Coolidge Corner Business District. Mr. Allen described the composition of the neighborhood and stated that the two-story restaurant is 4,400s.f. with seating for 114 patrons. He stated that the patio adjacent to the second floor dining area is located above Mint Julep. Mr. Allen stated that the proposal includes 9 tables with umbrellas and a painted metal guard rail with planters along the perimeter of the building. Mr. Allen stated that if approved, this proposal would be the first roof deck seating area in Coolidge Corner.

Piya Wiwatyukhan, Sousa Design Architects, 81 Boylston Street, Brookline, MA 02445, discussed existing conditions and described the decking materials and planters located along the railings.

Chairman Book inquired about access to the roof deck. Mr. Wiwatyukhan stated that patrons will access the roof deck through an existing glass door on the second floor. Zoning Board of Appeals Member Christopher Hussey inquired about whether the property owners supported the proposal. Mr. Allen stated that 1292-1308 Beacon Street is under common ownership and Delle Realty Trust supports the conversion of the space. Mr. Allen noted that there are no issues regarding property lines even though the deck extends directly above the Mint Julep store front.

Attorney Allen stated that the Planning Board voted unanimously in support of the proposal. Mr. Allen noted that there was no neighborhood opposition and the Planning Board felt the planters and the existing street trees along Beacon Street sufficiently screened the roof deck area.

Attorney Allen stated that the Petitioner requests special permit relief for a preexisting non-conforming rear yard setback pursuant to **Section 5.70** of the Zoning By-Law. Mr. Allen stated that the required rear yard setback is 10ft, existing setback 0ft, and proposed 0ft. He noted that 10ft. is difficult to provide where there is a shared passageway located immediately behind the building. He further noted that the desk would not exacerbate the existing non-conforming condition, and that the planters

and the plantings would serve as counterbalancing amenities pursuant to **Section 5.43** of the Zoning By-Law.

Next, Mr. Allen discussed special permit relief for parking pursuant to **Section 6.02.1.b** of the Zoning By-Law. He stated that **Section 4.07 Use #30** of the Zoning By-Law classifies a restaurant under 5,000s.f. as a public assembly use and **Section 6.02, Paragraph 1** of the Zoning By-Law requires 1 off-street parking space for every 5 seats within a public assembly use. Mr. Allen stated that prior to the Petitioner opening Hops N Scotch, Finale Restaurant had a total of 128 existing seats that triggered 26 parking spaces. Attorney Allen stated that Hops N Scotch received a Certificate of Occupancy for 114 existing seats that required a total of 23 parking spaces. Therefore, there are theoretically 3 parking spaces credited to 1306 Beacon Street. Notwithstanding the theoretical parking credit, Mr. Allen stated that the addition of 36 seats triggers a total of 7 parking spaces.

Since the parking credit does not satisfy the additional seats, Mr. Allen stated that the Petitioner requests relief under **Section 6.02.1.b** of the Zoning By-Law to waive the increased parking requirement of 4 spaces. Alternatively, Mr. Allen argued that **Section 6.02.3.f** of the Zoning By-Law exempts seasonal outdoor seating altogether. Mr. Allen stated that similar to the patio seating at Barcelona or Fairsted Kitchen on Beacon Street, the Hops N Scotch roof deck will only be open as the weather permits during April – October.

Zoning Board of Appeals Chairman Book requested further details about the licensing process through the Town of Brookline. Attorney Allen stated that the Selectmen granted an annual Common Victualler License and the Commonwealth of Massachusetts awarded the Petitioner an annual All Alcoholic Beverages license. He stated that the seasonal outdoor seating is not licensed by the Selectmen.

Attorney Allen discussed relief under 5.70 and Section 6.02 of the Zoning By-Law whereby a special permit is required under Section 9.05 of the Zoning By-Law. As for Section 9.05, Attorney Allen argued: (1) the specific site is an appropriate location where the patio is adjacent to the existing dining area and is immediately surrounded by restaurant and dining establishments; (2) there will be no adverse effect on the neighborhood where the patio is screened by street trees, planters will surround the patio, and there has been no neighborhood opposition; (3) there will be no nuisance or serious hazard to vehicles or pedestrians because it is located within walking distance of public transportation and short term parking options along Beacon Street and Harvard Avenue; (4) adequate and appropriate facilities will be provided for the proper operation and proposed use including the metal guard rail; and (5) the development will have no effect on the supply of housing available for low and moderate income people.

Zoning Board of Appeals Chairman Book asked if anyone wished to speak in favor of the application. No one spoke in favor of the application.

Zoning Board of Appeals Chairman Book asked if anyone wished to speak in opposition to the application. No one spoke in opposition to the application.

John Rosa, Zoning Coordinator for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS:

1. **Section 5.09.2.a: Design Review** – A special permit is required for any outdoor use on a lot any part of which is located in the G-1.75 (CC) district or which fronts Beacon Street.’
2. **Section 5.43: Exceptions to Yard and Setback Regulations**
3. **Section 5.70: Rear Yard Requirements**

Setback Requirements	Sec. 5.01 Required	Existing	Proposed	Relief
Rear Yard	10ft	0	0	Special Permit

4. **Section 6.02, Paragraph 1: Table of Off-Street Parking Space Regulations**

5. **Section 6.02.1.b: Off-Street Parking Space Regulations** – Under section 6.02.1.b, the Board of Appeals by special permit may waive up to 10 spaces or up to 50% of any increase parking requirement, whichever is greater.

Parking Requirements	Required	Existing	Proposed	Relief
One space / five seats	7	0	0	Special Permit

6. **Section 8.02.2 – Alteration or Extension**– A special permit is required for any change to a pre-existing non-conforming use or structure.

Mr. Rosa stated that the Planning Board unanimously supported the proposal to construct a seasonal outdoor roof deck with 36 seats at 1306 Beacon Street. Mr. Rosa stated that in addition to the planters surrounding the deck, the outdoor seating area is well screened by the existing second floor dining room and the existing street trees along Beacon Street. Mr. Rosa stated that there are few residential abutters in close proximity and the deck will only be visible by residents that live on the upper floors of 1280 Beacon Street and have windows looking out over Pleasant Street. Therefore, the Planning Board recommends approval of the roof deck and additional seating with the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans to the Assistant Director for Regulatory Planning for review and approval.
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 floor plans stamped and signed by a registered architect; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon John Rosa to deliver the comments of the Building Department. Mr. Rosa stated that the Building Department had no objections to the relief sought under this application where relief is minimal and the parking requirements can be waived under **Section 6.02.1.b** of the Zoning By-Law. Mr. Rosa stated that if the Board grants special permit relief, the Building Department will work with the Petitioner to ensure the proposal is built in accordance with the Building Code.

The Zoning Board of Appeals, having heard all the testimony, deliberated on the merits of the application. Board Member Christopher Hussey stated support for the relief requested. Mr. Hussey stated that the specific site is an appropriate location and the seasonal outdoor seating is a better use of the space. Board Member Johanna Schneider echoed support for the relief requested and stated that the roof deck enhances an already strong commercial use in the neighborhood. Chairman Book stated support where the proposal meets the requirements under **Section 9.05** of the Zoning By-Law. Furthermore, Mr. Book stated that the outdoor location is appropriate. Mr. Book believed that the proposed seasonal seating is exempt from additional parking requirements under Section 6.02.3.f, and also fulfills the necessary requirements for special permit relief to waive the 7 off-street parking spaces..

The Board then determined, by unanimous vote that the requirements for relief by special permit from the application of the provisions of **Sections 5.09.2.a, 5.70, and 6.02.1.b** of the Zoning By-Law pursuant to **Sections 5.09, 5.43, 8.02.2 and 9.05** of the Zoning By-Law were met. The Board made the following specific findings pursuant to said **Section 9.05**:

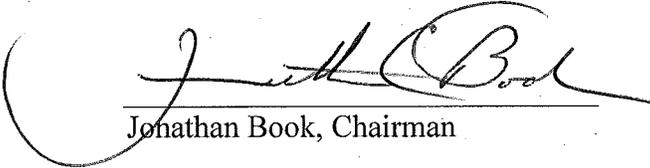
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the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

1. Prior to the issuance of a building permit, the applicant shall submit final plans including all roof deck plantings and screening materials, subject to the review and approval of the Assistant Director for Regulatory Planning.

2. The applicant shall maintain substantial plantings and other screening materials in the roof deck planters for the duration of the outdoor seating season (April-October).
3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval to ensure conformance to the Board of Appeals Decision;
1) Final plans including all roof deck plantings and screening materials, stamped and signed by a registered architect; and 2) evidence that the Board of Appeals Decision has been filed at the registry of deeds.

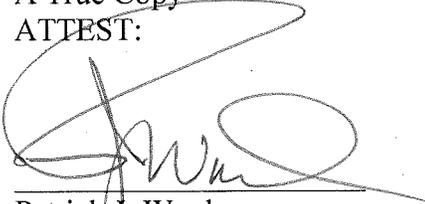
Unanimous Decision of
The Board of Appeals



Jonathan Book, Chairman

Filing Date: 3/31/15

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals

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