



# *Town of Brookline*

## *Massachusetts*

**BOARD OF APPEALS**  
Jesse Geller, Chairman  
Christopher Hussey  
Jonathan Book

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Brookline, MA 02445-6899  
(617) 730-2010 Fax (617) 730-2043  
Patrick J. Ward, Clerk

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2015-0008  
PETITIONER: Washington Square Hospitality LLC

Petitioners, Washington Square Hospitality LLC (tenant-operator) with Knapp Enterprises LLC (landlord), applied to the Building Commissioner for a building permit to renovate the existing restaurant at 1632 Beacon Street, including increasing the seating capacity from 22 seats to 49 seats. The application was denied with respect to the increase to 49 seats 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 April 2, 2015 at 7:00 p.m., in the Selectmen's Hearing Room as the date, time and place of a hearing for appeal. Notice of the hearing was mailed to the Petitioner, to their attorney 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 12, 2015 and March 19, 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:

**1632 BEACON ST – EXPAND RESTAURANT SEATING FROM 22 TO 49 SEATS in a G-1.75 (WS), General Business district, on April 2, 2015, at 7:00 PM in the 6<sup>th</sup> Floor Selectmen’s Hearing Room (Petitioner: Washington Square Hospitality LLC; Owner: KNAPP ENTERPRISES LLC) Precinct 11**

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

- 1. Section 6.02, Paragraph 1, Table of Off-Street Parking Regulations**
- 2. Section 6.02.1.b: Off-Street Parking Space Regulations**

*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](http://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 Sneider**, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at [rsneider@brooklinema.gov](mailto:rsneider@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 Mark Zuroff and Johanna Schneider. The case was presented by Attorney Scott C. Gladstone, 1244 Boylston St., Suite 200, Chestnut Hill, Massachusetts 02467. Chairman Geller called the hearing to order at 7:00 p.m.

Attorney Gladstone presented to the Board a background of the Property, stating as follows: The Property lies at the corner of Beacon and Washington streets in the heart of one of Brookline’s well-known restaurant districts. The Property was most recently being leased by the operator of Café Nicholas, a restaurant with 22 approved seats. The Property lies within a G-1.75 zoning district.

The new operator-lessee, Washington Square Hospitality, LLC, has received approval from the Selectmen for a liquor license and common victualers license to operate a restaurant with up to 49 seats. The members of the new operator entity have experience running successful restaurants such as Lala Rokh, Bin 26 Enoteca, Bina Osteria/Alimentari and others. Mr. Gladstone referred to the layout of the interior of the restaurant, attached to the Petition, which has been approved by the Selectmen, and by all other relevant Town Departments. Other than new signage, which will be subject to Planning Board approval, the operator-lessee does not intend to make any changes to the exterior of the building. Mr. Gladstone also presented letters of support from the Fireplace restaurant across the street from the Property, the landlord and from the Washington Square Association.

Mr. Gladstone stated that: Pursuant to the Table of Off-Street Parking Space Regulations, a restaurant in a G-1.75 zoning district must provide one parking space for every five seats available to patrons. The previous restaurant was permitted for 22 seats, which represents 4 parking spaces. If the Petitioner increases the seating to 49, as they are allowed to do under the license issued by the Selectmen, they are required to provide an additional 5 parking spaces. While there are available parking spaces in the back of the Property, those spaces service a number of businesses facing Beacon Street and the Petitioner does not wish to rely on the availability of that parking for customers, especially given the abundance of on-street metered parking and the proximity of the Green Line.

Zoning By-Law **Section 6.02.1.b** provides in pertinent part that, when a change or expansion of a non-residential use in a business district is proposed primarily or entirely within an existing building, which is the case with the current proposal, the Board of Appeals, by Special Permit, may wave up to 10 of the required increase in parking spaces. In granting the Special Permit, the following items are to be considered:

1. 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;
2. The peak parking demand for the proposed use in relation to the peak parking demand generated by other uses in the area;
3. The need for and provision of employee parking; and
4. The availability and/or shortage of existing public parking and transit facilities in the area.

Mr. Gladstone explained that the restaurant to be run by the Petitioner is extremely well qualified for special permit relief under Section 6.02.1.b of the Zoning By-Law.

1. The new restaurant, which will be called “Schmaltz” in recognition of the rich and satisfying foods that they intend to offer, will serve breakfast, lunch and dinner, with a full liquor license. The hours of operation will be 7AM to 12AM Sunday through Thursday and 7AM to 2 AM Friday and Saturday. There will be 6-7 employees on duty at any one time. The manager and alternate manager, who are responsible for closing the restaurant at the end of each day, both live on Summit Avenue in Brookline, an easy train ride away. Deliveries will be no more intense than are servicing the current restaurant at the Property and there is ample space for off-street deliveries at the back of the Property.
2. The new operator-lessee does not expect there to be a large demand for parking during the breakfast and lunch service as these times generally cater to those who walk or take the train to the area. When demand for parking is potentially higher at dinner service, more parking will be available at the rear of the Property and at the available metered parking, as the immediate abutters, Cat Hospital and Fast Frame, which also are serviced by the parking area on the premises, do not have evening hours. Moreover, the new operator intends for this to be a neighborhood restaurant, as opposed to a destination restaurant, with no intention on marketing significantly to patrons from outside the Washington Square neighborhood.
3. There is not expected to be a significant need for employee parking as the employees who are not responsible for closing the restaurant on Friday and Saturday night will be arriving and leaving by the readily available public transportation. For those employees responsible for closing after the later weekend hours, either a cab will be provided or one or two of the parking spaces that are in the back of the Property after regular business hours will be used. This location is situated in one of the most transit rich areas of Town, serviced by the Green Line, ample metered parking, parking spaces in the rear and it is on one of Brookline’s most clearly marked bike routes.

Mr. Gladstone concluded by explaining that the Section 9.05 elements had all been met, as was stated in the earlier memo:

- a. The site is an appropriate location for such a use, structure, or condition: The Property is already the site of a restaurant in one of Brookline's most popular restaurant districts.
- b. The proposed use will not adversely affect the neighborhood. This is already a popular restaurant currently at the site and other neighboring popular restaurants are much closer to any residential buildings. The locus is buffered by a large driveway and parking area to the side of it, with all of the Driscoll School fields next to that parking area, separated by a fence.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians since the use is not changing and there are ample facilities to facilitate visitors to the site (i.e. Green Line, bikes lanes, walking, and ample metered parking on Beacon Street).
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. The minimal changes to the interior of the restaurant space have been approved by the Health Department and the experienced operators will operate the restaurant in compliance with the rules of all of the supervising agencies.
- e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people since this is a continuation of a pre-existing commercial use.

Zoning Board of Appeals Chairman Geller asked if there was anyone present who wished to speak in favor of the application. Roberta Baptista, a resident of Westborn Terrace, spoke in favor of the proposal, noting that it has been a long time since there was a restaurant in Washington Square that served breakfast.

Zoning Board of Appeals Chairman Geller asked if there was anyone present who wished to speak in opposition to this application. No one spoke in opposition to the application.

Zoning Board of Appeals Chairman Geller called upon John Rosa, Zoning Administrator for the Town of Brookline, to deliver the findings of the Planning Board.

**FINDINGS**

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

The applicant must provide 1 parking space for every 5 seats.

**Section 6.02.1.b – Off-Street Parking Space Regulations**

Where 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 the increase requirement, whichever is greater.

	<b>Required</b>	<b>Proposed by special permit</b>	<b>Relief</b>
<b>Parking Required</b>	5 additional	0 new spaces	Special Permit

Mr. Rosa responded that the Planning Board supported the request to increase the number of restaurant seats as the proposed hours of operation are such that a sufficient number of parking spaces will be available for restaurant staff and customers during meal shifts. Additionally, since many area restaurants do not serve breakfast or lunch, while other businesses that share the parking lot at the rear of the building do not have evening hours. Mr. Rosa also noted that the Transportation Board has urged the other Town Boards to find ways to reduce the number of parking spaces required wherever possible.

The Planning Board recommended approval of increasing the number of seats from 22 to 49 per the plan submitted by Lennard Roberts Architect LLC, dated 12/17/14 subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final floor plans, subject to the review and approval of the Assistant Director of Regulatory Planning.
2. An MBTA pass subsidy program shall be offered to all 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) final floor plans signed by a registered architect; 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Mr. Rosa to deliver the comments of the Building Department. Mr. Rosa reported that the Building Department was supportive of the proposal and stated Zoning By-Law **Section 6.02.1.b** provides for the necessary relief.

In deliberations, Board Chairman Geller observed that Section 6.02.1.b of the Zoning By-Law is intended to permit relief in just the type of circumstances presented. Board Member Schneider observed that the Property lies in a densely populated neighborhood and that, as a consequence, many of the restaurant patrons would be walking to the new restaurant. Board Member Zuroff noted that not all of the businesses on the same block would necessarily always be closed at night; but, nonetheless he supported the request for relief.

The Board of Appeals then determined by unanimous vote that the requirements have been met for the issuance of a special permit under **Sections 6.02.1.b** and **9.05** of the Zoning By-Law, granting relief from application of the provisions of **Section 6.02, Paragraph** of the Zoning By-law. The Board made the following specific findings pursuant to said **Section 9.05**:

- a. The specific site in 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.

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

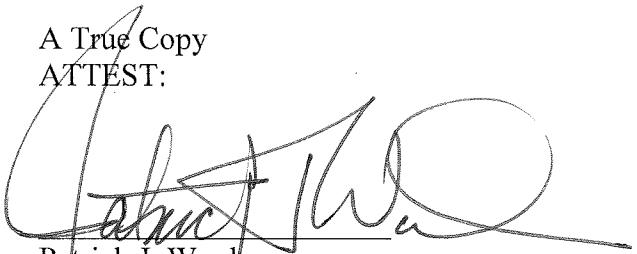
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Unanimous decision of the  
Board of Appeals

Filing Date: 5/6/15

  
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Jesse Geller, Chairman

A True Copy  
ATTEST:  
  
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Patrick J. Ward  
Clerk, Board of Appeals

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