Town of Brookline
Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2015-0046
OWNER: BGOODMAN LLC
40 ASPINWALL AVENUE, BROOKLINE, MA

Petitioner, Bodyscapes IV, LLC and Owner, BGoodman LLC, applied to the Building Commissioner for a change of use in the basement area of 40 Aspinwall Avenue, The Brookline Teen Center building, to a Cross-Fit gym, which use required a Special Permit and parking relief. 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 October 22, 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 October 8, 2015 and October 15, 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:

40 ASPINWAL AVE (BROOKLINE TEEN CENTER) – CONVERT BASEMENT GARAGE TO A CROSS-FIT HEALTH CLUB in an L-1.0, Local Business, zoning district, on
October 22, 2015, at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner: BodyScapes IV LLC; Owner: BGOODMAN LLC)

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

1. **Section 4.07: Table of Use Regulations, Use #18a**
2. **Section 6.02, Paragraph 1: Table of Off Street Parking Space Requirements**
3. **Section 6.02.1.c: Off Street Parking Space Regulations**
4. **Section 6.02.5.d: Off Street Parking Space Regulations**
5. **Modification, as necessary, of BOA case #2011-0028**
6. **Any additional relied 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 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.***

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At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman Avi Liss, and Board Members Christopher Hussey and Johanna Schneider. The case was presented by Attorney Scott C. Gladstone, 1244 Boylston St., Suite 200, Chestnut Hill, Massachusetts 02467. Chairman Avi Liss 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 site is located in an "L-1.0" (local business) business district. The site is currently occupied by the Brookline Teen Center ("Teen Center"), including 18 surface parking spaces

with additional parking in the garage below the Teen Center. The current use is governed by a Special Permit issued by the ZBA in Case No. 2011-0028 ("2011 Permit"). The 2011 Permit required the Teen Center to maintain 5 parking spaces on site for its own use and to provide a drop off and pickup area on site. The Teen Center has provided the required 5 parking spaces for its own dedicated use and has maintained a marked drop off and pick up area on site. Attorney Gladstone explained that this was always a dual use building since the Teen Center began using it. At first the basement garage was occupied by an auto body shop. Then, the Teen Center leased the basement garage as well as its current space and it began to rent out the basement garage spaces in order to supplement the Teen Center's financial base so that it would need to raise less money to cover operating costs.

Attorney Gladstone next explained that Cross-Fit currently operates out of 1,285 Beacon Street and will be moving its operation to the Teen Center basement space, where it will occupy 6,592 square feet of space and the remainder of the basement will be retained by the Teen Center for storage. Cross-Fit will be subleasing the space from the Teen Center, which holds the master lease for the entire property. Other than signage, which will be applied for pursuant to Article VII of the By-Law at a later date, there are no plans to alter the exterior of the building. There are also no plans to alter the parking area or the drop-off pick-up area on the site. The Teen Center plans on keeping exclusive use of the 10 parking spaces on one side of the existing parking lot, while the Cross-Fit lease will include exclusive use of the 8 surface parking spaces on the other side of the existing parking lot.

Attorney Gladstone next discussed the zoning relief required from the Board of Appeals.

Section 4.07: Table of Use Regulation, Use #18a. Use 18a applies to health clubs of greater than 2,500 square feet, which is an allowed use in an L district by special permit.

Section 6.02, paragraph 1: Table of Off-Street Parking Space Requirements. The site is in an L-1.0 district and the proposed use will be below the ground floor. According to the Section 6.02 chart, a parking space is required for every 400 square feet. The proposed space is 6,592 square feet, which yields the need for 16 parking spaces. The Plans show 8 parking spaces available for the exclusive use of Cross Fit. Accordingly, Cross-Fit requests relief for 8 spaces (16 less 8).

Section 6.02.1.c: Off Street Parking Space Regulations. This Section requires that, if two uses are serviced by a common parking lot, the sum of the spaces must not be less than those required for each use individually. The required parking for the Teen Center is 5 spaces per the 2011 Permit and the required parking for the Cross-Fit use, <u>without relief</u>, is 16, for a total of 21 spaces, which are 3 spaces more than are provided. However, Section 6.02.01 also allows for reduction of the number of spaces required for a common parking facility "if it can be demonstrated to the Board of Appeals that the hours or days of peak parking need for the uses are so different that a lower total will provide adequately for all uses served by the facility. Such is the case on this site. The Teen Center has the following hours posted on its website: Monday 2:30 PM to 8 PM; Tuesday -Thursday 3PM to 8PM; Friday – Saturday 3PM to 10PM; closed on Sunday. In contrast, Applicant intends to maintain the following hours for the Cross-Fit gym: Monday – Friday 6AM to 8PM; Saturday 9:30AM to 1:30 PM and Sunday 10AM to 1PM. Thus, the Cross-Fit use will be the only use open on the site on Sundays all day; there will be no overlapping hours on Saturday; and the hours will not overlap Mondays 6AM to 2:30PM and Tuesday through Friday 6AM through 3PM. For the few evening hours during the work-week wherein there is overlap, these hours are relatively light for the Cross-Fit use, as compared to its busiest time, which are the early morning hours when the Teen Center is closed.

Accordingly, the Applicant requested that the ZBA exercise its discretion, pursuant to Section 6.02.1.c, to issue a Special Permit ZBA reducing the number of parking spaces required for Applicant from 16 to 8.

Section 6.02.5.d Off Street Parking Regulations. This Section empowers the ZBA to grant a special permit to reduce the number of required parking spaces by 50% for uses wherein "the occupancy of floor space by customers, clients or employees is substantially below the normal or average retail and office uses." A reduction of 50% would be a reduction of 8 parking spaces, which would bring the plans into compliance with the parking requirements of the by-law. Attorney Gladstone argued that the proposed Cross-Fit use is substantially below the normal average retail and office use. While there is a maximum occupancy of 25 people in the space, the average number of employees and gym users at the busiest times, during the early morning hours, is a class of 15 (maximum) with no more than 2 employees, with a smaller rush between 5PM and 7PM, while the rest of the day there are typically only 1 employee and 2 to 3 member users at a time. Thus, Applicant requested a reduction of parking under this section in the alternative.

Reasons for granting relief under 6.02:

Attorney Gladstone argued that this parking lot is a shared use with the Teen Center. The overwhelming majority of teen users of the Teen Center walk to the Teen Center. The hours of operation of the Teen Center and the Cross Fit barely overlap and, where there is overlap, those hours are some of the lightest use times for Cross Fit. The nearest other commercial use is the Walgreens next door, which has more than sufficient parking of its own on its substantial lot. The site is serviced by a bus route along nearby Harvard Street and it is within walking distance of the Brookline Village T stop. The scant number of

employees on duty at any one time will take public transportation as they do at Cross-Fit's current location. For all of these reasons, Attorney Gladstone argued, this site qualifies for special permit relief under Section 6.02.1.c.

Modification as necessary of BOA case #2011-0028. Attorney Gladstone explained that this is a prophylactic citation in the denial letter, but there are no provisions of the 2011 Permit, which will be affected by the proposed additional use. Attorney Gladstone repeated that the proposed use will not reduce the number of parking spaces available to the Teen Center to satisfy the parking requirements imposed under the 2011 Permit. The drop-off and pick-up system of the parking lot will be unaffected by the proposed re-assignment of some of the existing parking spaces on the site. Attorney Gladstone also explained that this was a dual use building when the 2011 Special Permit was granted and it will remain a dual use building under the Applicant's proposal.

Mr. Gladstone went on to explain that the proposal satisfied all of the Special Permit standards under Section 9.05 of the Zoning By-Law as follows:

> a. The site is an appropriate location for such a use, structure, or condition: The Teen Center already contains a basketball court, exercise machines , weights and a bowling alley for teens. The Cross-Fit gym, servicing exclusively adults engaging in aerobic and muscular fitness exercises provides a subset of services already offered at the Teen Center with the significant exception that there will not be young teens using the Cross-Fit gym.
>
> b. The proposed use will not adversely affect the neighborhood. See above.
>
> c. There will be no nuisance or serious hazard to vehicles or pedestrians: As was stated above, the two uses will barely overlap in time and, when it does, it is during the least used hours for Cross-Fit. Moreover, Applicant expects that many of the users will be local residents who will generally walk, jog or take public transit to the site.
>
> d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. The Plans show appropriate facilities modeled after the successful facilities provided at the Coolidge Corner location.

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 commercial use in a pre-existing commercial space.

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

Zoning Board of Appeals Chairman Liss asked if there was anyone present who wished to speak in opposition to this application. One member of the public, Scott Murphy of 162 Chestnut Street posed questions about safety measures to keep the users of the Cross-Fit gym separate from the users of the Teen Center. Attorney Gladstone responded that the two uses have different entrances in different floors of the building and that both the Cross Fit and the Teen Center control entry through issuance of membership cards. It was noted that the storage space being retained in the basement level by the Teen Center has its own entrance from the Teen Center space above.

Zoning Board of Appeals Chairman Liss asked if the Board had any questions. Board Member Johanna Schneider asked about the expected frequency of car trips given that the Cross Fit would be further from a T stop at the new location as compared to the location Cross Fit is vacating. Attorney. Gladstone responded that the clientele of the Cross Fit will not consider the distance from the Brookline Village T stop to be too far and he noted that the bus stops at nearby Harvard Street. Attorney Gladstone also repeated that the typical clientele of Cross Fit frequently jogs or bikes to the facility.

Board Member Christopher Hussey asked about a note on the plans indication "new entrance." The architect, who was present, stated that this was a drafting error that should be stricken.

Attorney Gladstone requested that one of the conditions proposed by the planning board be amended so that the site plan need only be certified by a registered architect. Attorney Gladstone noted that the parking plan was not created by Cross Fit, but was copied off of the pre-existing plans from the Teen Center since there are going to be no changes to the parking lot. The Board members indicated agreement that this change could be made.

Zoning Board of Appeals Chairman Liss called upon Jay Rosa, Planner for the Town of Brookline, to deliver the findings of the Planning Board.

FINDINGS

Section 4.07, Use #18a – Permitted Uses

A health and fitness club over 2,500 s.f. requires a special permit.

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

Sixteen parking spaces are required for the basement use and only eight are proposed. Under the following two sections of relief if the appropriate criteria are met, the parking requirement may be lowered by special permit.

	Required	Allowed by Special Permit	Proposed	Finding
Parking	16	8	8	Special Permit*/Variance

* *Under **Section 6.02.1.c - Off-Street Parking Regulations (Dual Use Parking)** a special permit may reduce parking requirements for two or more uses where it is demonstrated that the hours or days of peak parking need are so different that a lower total provides adequate parking.*

* *Under **Section 6.02.5.d - Off-Street Parking Regulations (Lower Than Normal Use)** A special permit may reduce up to ½ the parking requirement for a use that has a lower than normal parking demand.*

Modification, if required, to Board of Appeals Case #2011-0028 (9/28/11) – The prior case refers to the building having only one user - the teen center, and this proposal modifies that since there will be two users.

Mr. Rosa stated that the Planning Board unanimously supported the conversion of the teen center basement space to a Cross-Fit gym facility. Board Members agreed that both the

Teen Center, and the gym use to a lesser extent, present lower than normal parking demand for the respective use types. Mr. Rosa also confirmed that the Board was sympathetic to abutter concern regarding noise and potential traffic impact but did not feel that the proposed gym use will generate adverse impact on the surrounding neighborhood or area vehicular safety. Therefore, the Planning Board recommended approval of the site plan and floor plans labelled "Crossfit Gym Permit Set, dated 7/7/15, subject to the following conditions:

1. Prior to the issuance of a building permit, a final parking lay-out plan with handicapped parking space(s) and floor plans indicating perimeter wall construction and window replacement, if any, shall be subject to the review and approval of the Assistant Director for 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, including the parking lay-out; 2) floor plans stamped and signed by a registered architect; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Rosa further reported that, in addition to the conditions recommended in the report from the Planning Board, the Planning Department was also recommending a condition that there be no outdoor fitness activities allowed prior to 8 AM.

The Chairman then called upon acting Chief Building Inspector Michael Yanovitch to deliver the comments of the Building Department. Mr. Yanovitch reported that the Building Department was supportive of the proposal, stating that it was a good additional source of revenue for the Teen Center. Mr. Yanovitch also stated that the Building Department supported the Planning Department's suggestion of adding a condition that there be no outdoor activities prior to 8AM.

The Board deliberated on the merits of special permit relief as requested. Board Member Johanna Schneider expressed skepticism that Cross Fit, in this location, would have substantially below the normal or average for parking demand, but she was willing to grant the application for a reduction in parking on the grounds that this was a duel use wherein the hours of the two uses was sufficiently different that the lower parking requirement would provide adequately for all uses service by the facility. Board Member Christopher Hussey concurred with Board Member Schneider's analysis as did the Board Chairman, Avi Liss. Board Members also agreed that no modification of BOA case #2011-0028 is required because duel use of the property existed when special permit relief was granted.

The Board voted unanimously that the requirements have been met for the issuance of a special permit under **Sections 6.02.1.c** and **9.05** of the Zoning By-Law, granting relief from the provisions of **Sections 4.07, Use #18a** and **6.02, Paragraph 1** of the Zoning By-Law. The Board made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

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

Accordingly, the Board voted unanimously to grant special permit relief, subject to the following revised conditions:

1. **Prior to the issuance of a building permit a final parking lay-out plan with handicapped parking space(s) and floor plans indicating perimeter wall construction and window replacement, if any, shall be subject to the review and approval of the Assistance Director for Regulatory Planning.**

2. **Cross-Fit shall not conduct morning gym activities outside of the building located at 40 Aspinwall Avenue prior to 8:00AM.**

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 plan stamped and signed by a registered architect, including the parking lay-out and 2) floor plans stamped by a registered architect and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Unanimous decision of the

Board of Appeals

Avi Liss, Chairman

Filing Date: 11/12/15

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals

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