



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Jonathan Book
Christopher Hussey

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2016-0069
CAFFE NERO AMERICAS, INC.
1 HARVARD STREET, BROOKLINE, MA

Petitioner, Caffe Nero Americas, Inc, applied to the Building Commissioner for permission to convert space to a café/restaurant with 55 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 December 8, 2016 at 7:10 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 November 24, 2016 and December 1, 2016 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:

1 Harvard Street to renovate existing space for a 55 seat cafe in a G2.0 (General) Business District, on December 8, 2016 at 7:10 PM in the 6th Floor Selectmen's Hearing Room (Petitioner/Owner: Café Nero Americas, Inc.) *Precinct 4*

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 Requirements**
- 2. Section 6.02.1.b: Off-Street Parking Space Regulations**
- 3. Modification, as necessary, of BOA case # 3031 May 10, 1990 and BOA case # 3157 December 17, 1992**
- 4. 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 Johanna Schneider and Jonathan Book. Also, present at the hearing was Michael Yanovitch and 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. Chairman Zuroff suggested that that the two Café Nero cases presented the same issues of waived parking although in different locations and recommended, with the concurrence of the Board and others in attendance that the arguments for both cases be presented together. Attorney Allen agreed and presented both cases concurrently.

Attorney Allen provided a background of the Petitioner stating that the proposed café, Caffe Nero, is a family owned café/restaurant which began in the United Kingdom and now has about 7 locations in Massachusetts. Attorney Allen stated that Caffe Nero is distinguished from other cafes because they craft their own coffee and focus on both coffee and lunch options. Attorney Allen stated that 1 Harvard Street is a retail space located in the Brookline Village neighborhood which previously served as ISIS Spa. Attorney Allen stated that Caffe Nero Americas, LLC, is proposing a café/restaurant with 55 seats. Attorney Allen stated that the required number of parking spaces based on the number of seats is 11 spaces. Attorney Allen stated that there is a theoretical parking credit of 6 parking spaces for the previous retail use resulting in 5 required parking spaces. Mr. Allen stated that the remaining parking spaces may be waived 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, Attorney Allen 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 cafe having 3 employees per shift; (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 meters, a parking lot at the rear of the property, and several parking lots within walking distance. Also, Caffe Nero will predominantly cater to the daytime/lunchtime crowd in the Village, thus not conflicting with neighboring eateries; (iii) with respect to the need for and provision of employee parking, there will be 3 employees on site, and 1 employee parking spot will be provided; (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 transit is available.

Mr. Allen then discussed relief under Section 9.05 of the Zoning By-Law. Attorney Allen stated the following: (1) specific site is an appropriate location for the proposed use; (2) the use will not adversely affect the neighborhood because the proposed use is wholly consistent with the neighboring uses; (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; and (5) there will be no effect on the supply on housing available for low and moderate income people.

Chairman Zuroff welcomed comments in favor of, or in opposition to, the proposal. No comments were made relative to the proposal.

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

| | Required | Existing | Allowed by Special Permit | Finding |
|---------|----------|----------|---------------------------|----------------|
| Parking | 5* | 0 | 1 | Special Permit |

FINDING
S
Section
6.02,

Paragraph 1 – Table of Off- Street Parking Requirements

*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 required number of parking spaces based on the number of seats is 11 spaces. However, there is a theoretical parking credit of six parking spaces for the previous retail use resulting in 5 required parking spaces.

Section 7.06, Paragraph 3 – Regulated Façade Alterations

All regulated façade alterations shall be subject to design review process of Section 7.03, paragraph 2.

Modification of BOA Case #3031 and #3157:

Modification is not necessary.

Ms. Clark stated that the Planning Board is supportive of the conversion of the prior retail space into a cafe as it will improve this vacant storefront at a prominent location in Brookline Village. She stated that the Board believes there will be adequate on-street parking for the proposed café. The Planning Board noted that public transportation is also available via the Harvard Street bus and the Brookline Village MBTA rapid transit stop is nearby. Therefore, the Planning Board recommended approval of the site plan and floor plans labelled “Caffe Nero” by KHArchitecture, dated 8/1/16, 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 plan stamped and signed by a registered engineer or land surveyor; 2) final floor plans stamped and signed by a registered architect or engineer and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Mr. Yanovitch then delivered the findings for the Building Department. Mr. Yanovitch stated that the Building Department is supportive of the proposal. Mr. Yanovitch stated that the proposed café/restaurant is a welcomed presence and that the Building Department will work with the Petitioner to ensure compliance, should relief be granted.

During deliberation, Board Member Schneider stated that she is supportive of the proposal. Chairman Zuroff and Board Member Book concurred with her 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.b** of the

Zoning By-Law were met. The Board made the following specific findings pursuant to said Section

9.05:

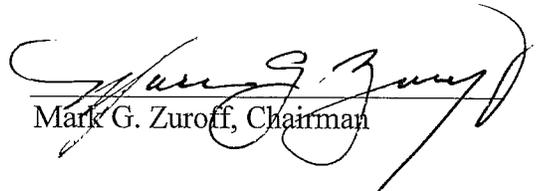
- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the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

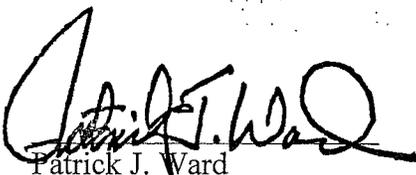
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- 3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final floor plan stamped and signed by a registered engineer or 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: 12/15/16


Mark G. Zuroff, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals