



Town of Brookline Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Mark G. Zurroff
Christopher Hussey

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-
6899
(617) 730-2010 Fax (617)
730-2043

Patrick J. Ward, Clerk

2019 APR -9 P 2 08

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TOWN CLERK

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2019-0015
1285 BEACON INVESTORS LLC
1285 BEACON STREET, BROOKLINE, MA

Petitioner, 1285 Beacon Investors LLC, applied to the Building Commissioner for permission to convert existing space to medical offices. The application was denied and an appeal was taken to this Board.

The Board determined that the properties affected were those shown on a schedule certified by the Board of Assessors of the Town of Brookline and fixed March 21, 2019 at 7:00 PM., in the Selectmen's Hearing Room as the date, time and place for the public hearing. Notice of the hearing was mailed to the Petitioners, to their attorney, Jennifer Dopazo Gilbert, 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 7, 2019 and March 14, 2019 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:

1285 BEACON STREET, BROOKLINE, MA 02446 - Convert existing space to medical offices in a(n) G-1.75(CC) GENERAL BUSINESS on March 21, 2019 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: ROBERT L. ALLEN, JR.) Precinct 10

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:

§6.02, Paragraph 1 - TABLE OF OFF-STREET PARKING SPACE REQUIREMENTS

§6.02.1.B – GENERAL REGULATIONS APPLYING TO REQUIRED OFF-STREET PARKING FACILITIES

§6.04.5.B – DESIGN OF ALL OFF-STREET PARKING FACILITIES

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 in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer.

If you have any questions regarding the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

*Jesse Geller, Chair
Mark G. Zuroff*

Publish: 3/7 & 3/14

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Mark G. Zuroff and Board Members Kate Poverman and Randolph Meiklejohn. Also present at the hearing were Assistant Director of Regulatory Planning, Polly Selkoe and Deputy Building Commissioner, Joseph Braga.

The case was presented by Jennifer Dopazo Gilbert, Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, First Floor, Brookline, Massachusetts 02445. Also in attendance was Andrew Shinn, Planner of Real Estate and Facilities for Brigham and Women's hospital, the tenant looking to establish a business at 1285 Beacon Street.

Chairman Zuroff called the hearing to order at 7:00 p.m. Attorney Dopazo Gilbert waived the reading of the public notice.

Attorney Dopazo Gilbert then described the proposal at 1285 Beacon Street. She noted that the property is in the G-1.75(CC) Zoning District, located on the corner of Beacon and Charles Street. The site is bordered by other commercial uses along Beacon Street, Temple Sinai to the rear, and multi-family residential units in the immediate neighborhood. She continued that a large portion of the first floor is currently an urgent care facility with a gym located above it. Attorney Dopazo Gilbert noted that the space proposed to be converted was previously a daycare, but due to issues at their Watertown location, the daycare had to file for bankruptcy and closed abruptly. She stated that Brigham and Women's is the proposed tenant for the vacant space, and she noted that the proposal was to open a primary care facility with a maximum of five doctors. The proposed tenant and existing urgent care facility are affiliated with Partners and would work well located next to one another. Attorney Dopazo Gilbert noted that this change of use required relief for parking. The Petitioner seeks relief by special permit for relief from **Section 6.02, Paragraph 1** for the table of off-street parking requirements, under **Section 6.02.1.b**, which allows the Board of Appeals to waive up to ten spaces or fifty percent of the spaces required, whichever is greater, for a change or expansion of a non-residential use in a business district. She pointed out that the most recent use as a daycare required three spaces and nine were provided (a total of forty-two spaces required and forty-eight existing), while the proposed use requires seventeen, of which nine are provided (a total of fifty-six spaces required and forty-eight provided). She

further noted that the required number of parking spaces was calculated based on the square footage. She continued, stating that there would be fifteen employees who may frequent the facility, but she noted that only ten would be staffing the building at any given time as they would rotate. Attorney Dopazo Gilbert noted that the location is transit-oriented and located close to two MBTA stops, one of which is a few hundred feet from the building. She noted that the hours for the facility are set to be from approximately 8:30 AM – 5:00 PM Monday through Friday, which works well with the gym. Furthermore, a maximum of five employees are expected to need parking during business hours and Brigham & Women's offers a fifty percent subsidy on MBTA passes.

Board Member Poverman asked about the level of occupation throughout the day. Attorney Dopazo Gilbert noted that there have been many prior decisions and while there was previously an opinion that there would be a demand for overnight parking, that demand did not come to fruition. Furthermore, there was not a concern or issue noted regarding parking during the day.

Chairman Zuroff asked how many staff there would be on a regular basis. Andrew Shinn, Planner of Real Estate and Facilities for Brigham and Women's, 75 Francis Street, Boston, Massachusetts, spoke on behalf of Brigham and Women's. Mr. Shin stated that the staff for the space would be fifteen, but noted that based on a rotation there would not be more than two to three physicians at a given time, which would yield nine to ten employees. Chairman Zuroff asked where they would be parking. Mr. Shinn noted that the administrative staff is not expected to be parking. He noted that in addition to their MBTA pass benefit, Brigham and Women's has other lots in the area in which workers can park. Chairman Zuroff asked how many patients would be expected at a time. Mr. Shinn noted that sixteen was the expected maximum number of patients on site, and he noted that there may occasionally be additional family members with patients. Chairman Zuroff asked whether the patients would be able to

use the parking spaces when they visited the facility. Mr. Shinn noted that is expected, and he also noted that most of the population is expected to be local and often arrive by public transit.

Chairman Zuroff asked whether there was generally an availability of spaces. Attorney Dopazo Gilbert answered affirmatively. Chairman Zuroff asked whether the lot was open to the public. Ms. Dopazo Gilbert stated that the spaces were for the tenants and their customers. Chairman Zuroff asked whether tickets were validated. Mr. Shin stated that there is no validation system in place due to the limited demand for parking, but he noted that the tenant would work with the landlord if a validation system became necessary.

Board Member Meiklejohn inquired as to the adjacency of the primary care and the urgent care. He asked whether some personnel would work between the two locations. Mr. Shinn noted that the option may be considered in the future for efficiency. Chairman Zuroff noted that the entities were independent. Chairman Zuroff asked whether this was a lease agreement. Attorney Dopazo Gilbert answered affirmatively.

Chairman Zuroff then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal.

Chairman Zuroff then asked whether anyone was present to speak in opposition to the proposal. No one spoke in opposition to the proposal.

Chairman Zuroff then called upon Polly Selkoe, Assistant Director of Regulatory Planning, to deliver the findings of the Planning Board. Ms. Selkoe noted the following:

FINDINGS

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

	Required (currently)	Required (new proposal)	Existing	Relief
Parking	42 spaces	56 spaces	48 spaces	Special Permit*

* Under Section 6.02.1.b, when a change or expansion of a non-residential use in a business district is proposed within an existing the Board of Appeals may waive up to 10 spaces or up to 50% of any increased requirement.

Modification of Prior ZBA Decisions: If the Zoning Board of Appeals finds it necessary, the following prior ZBA decisions may be modified. They are described above.

6/1/2004, Case # 030035 (or 62)

3/24/2005, Case #050012

8/9/2005, Case #050037

11/13/2007, Case #050048

12/1/2011, Case #2011-0056

10/10/2013, Case #2013-0076

PLANNING BOARD COMMENTS

The Planning Board clarified that the proposed new use is part of a separate primary care family practice, up to 5 doctors that is separate from the Urgent Care center next door. The Board had no concerns with the new use proposed for this site and did not envision any impacts on the parking availability.

Therefore, the Planning Board recommends approval of the floor plan by NEMD Architects, dated 1/25/2019 and the parking plan by Smits Associates Architects Inc. dated 6/19/2014, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final floor plan subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Future tenants or any existing tenants using the converted space shall implement an employee T-pass program, where tenants subsidize at least 50 percent of the cost of monthly subway and bus T-passes for 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) 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.

Chairman Zuroff asked whether this relief should be tied to this particular use. Ms. Selkoe noted that when a new use proposes to go into the space the new parking requirement would be reviewed. She noted that the Petitioner was before the Board of Appeals because of the increased parking requirement. Chairman Zuroff asked whether a day care or office use could go into the space. Ms. Selkoe noted that both of those uses require less parking and would likely be able to proceed without returning to the Board of Appeals.

Chairman Zuroff then called upon Joseph Braga, Deputy Building Commissioner, to deliver the report of the Building Department. Mr. Braga noted that he had no issues with the proposal and should the Board grant the requested relief, the building department would work with the Petitioner to ensure compliance with the building code and the conditions of the Board of Appeals decision.

The Board then deliberated. Chairman Zuroff noted his support for the proposal. Board Members Poverman and Meiklejohn agreed.

In reliance on the above referenced plans and the reasons stated by the Petitioners counsel, the Board then determined, by unanimous vote, that the special permit should be granted from **Section 6.02, Paragraph 1** for the table of off-street parking requirements, under **Section 6.02.1.b** of the Zoning By-Law.

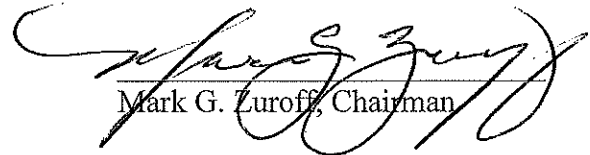
Accordingly, the Board voted unanimously to grant the zoning relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final floor plan subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Future tenants or any existing tenants using the converted space shall implement an employee T-pass program, where tenants subsidize at least 50 percent of the cost of monthly subway and bus T-passes for 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) 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.

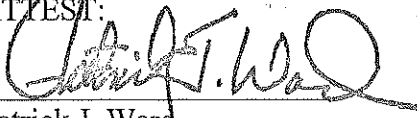
Unanimous Decision of
The Board of Appeals

Filing Date: 04/09/19


Mark G. Zuroff, Chairman

A True Copy

ATTEST:


Patrick J. Ward
Clerk, Board of Appeals