



BOARD OF APPEALS
Jesse Geller, Chairman
Jonathon Book
Christopher Hussey

Town of Brookline
Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2013-0018

Petitioner, Jeffrey Cohen and Justine Cohen, applied to the Building Commissioner for permission to expand a yoga studio beyond 2,500 square feet. The application was denied and an appeal was taken to this Board.

On February 28, 2013 the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed April 25, 2013 at 7:00 p.m. in the Selectmen's hearing room as the time and place of a hearing on 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 April 11, 2013 and April 18, 2013 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. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: Jeffrey Cohen and Justine Cohen

Owner: **Jeffrey Cohen and Justine Cohen**
Location of Premises: **1052-1054 Beacon Street**
Date of Hearing: **April 25, 2013**
Time of Hearing: **7:00 p.m.**
Place of Hearing: **Selectmen's Hearing Room, 6th Floor**

A public hearing will be held for a variance and/or special permit from:

- 1. Section 4.07; Table of Use Regulations**
- 2. Section 6.02, Paragraph 1; Table of Off-Street Parking**
- 3. Section 6.02.1.b; Off Street Parking Space Regulations**
- 4. Section 8.02.2; Alteration or Extension**

of the Zoning By-Law to **expand a yoga studio beyond 2,500 square feet.**

Said premise located in a **L-1.0 zoning district.**

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

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 the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

**Jesse Geller
Jonathon Book
Christopher Hussey**

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 Christopher Hussey and Mark Zuroff. 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. Also in attendance were Jeffrey Cohen and Justine Cohen, the owners of 1052-1054 Beacon Street.

Zoning Board of Appeals Chairman Geller called the hearing to order at 7:00p.m. Attorney Allen stated that the petitioners propose to expand a yoga studio beyond 2,500 square feet. Attorney Allen presented to the Board a background of the petitioners and the property, stating that 1052 Beacon Street was most recently occupied by Mirage Hair and Spa, and 1054 Beacon Street was occupied by Zia, a clothing store. The Petitioner's purchased the property at 1052-1054 Beacon Street in January 2013. The surrounding uses are primarily commercial with a number of restaurants, bars, and retail stores as well as residential buildings in the neighborhood. The retail shops are contained in a one-story, pre-cast concrete building built in the 1920s. The area is part of the St. Mary's/Lower Beacon commercial district. Attorney Allen stated that the applicants are proposing to enlarge the existing business space at the two addresses. The existing yoga studio is 2,500 square feet, and the proposed studio is 3,249 square feet. The proposal will convert 749 square feet of unfinished basement space to usable space. The first floor area will not be increased. The conversion of both units to a yoga studio requires a Special Permit, not a Variance, pursuant to a Town Meeting vote of May 24, 2012 amending the Town's Zoning By-Law, and will also need a waiver of four (4) parking spaces from the off-street parking requirements.

Attorney Allen stated that the proposal comes before the Zoning Board of Appeals with the support of the Planning Board and the petitioners have a number of letters of support from neighbors and clients, men, women and even children, about how much this business has meant to them

Justine Cohen, of 45 Chester Street, Newton, Massachusetts, and owner of the property at 1052-1054 Beacon Street, spoke about the proposal. She has run a yoga studio in Newton for many years, which is a family-owned and family run. There are several Brookline residents who are customers at the Newton location who speak very highly of the business and support the proposal before the Zoning Board of Appeals. Many residents have discussed wanting a yoga studio in the heart of Brookline. In

addition to yoga, Cohen provides many fundraisers and community programs from the studio and plans to do the same with the new business.

Zoning Board Member Hussey inquired as to whether there is parking on the premises now. Justine Cohen stated that there is not currently parking.

Attorney Allen then resumed his presentation to the Zoning Board of Appeals. Attorney Allen stated that the zoning relief requested was for a special permit and a waiver for four parking spaces. The Zoning Board may waive by way of special permit up to ten (10) parking spaces for any increased parking requirement when a change or expansion of a non-residential use in a business district is proposed. The applicant is requesting 4 parking spaces to be waived. Attorney Allen stated that this proposal involves the combination of two separate stores into one store; that being a yoga studio, and perhaps this reduction in number of stores may have a reduction in the number of parking spaces needed. While there is always a demand for parking spots on this portion of Beacon Street, many of the customers will come from the local neighborhood or get access to the studio by way of the Green Line. Attorney Allen stated that this is a minimal request and that the Board may waive up to 10 spaces under the Zoning By-Law and that the petitioners are only requesting four spaces be waived. Further the petitioner meets the requirements for a Special Permit under **Section 9.05** of the Zoning By-Law. The site is in an appropriate location for such a use. It is within a commercial district. Town Meeting recently voted that businesses, such as a yoga studio, should be permitted in this area by way of the special permit. There is no adverse effect or adverse impact on the neighborhood. There is a lot of support for this project. Several individuals came and spoke in support of this proposal at the Planning Board hearing. There has been no known opposition. There is no nuisance or hazard to vehicles or pedestrians. Again the reduction from two stores to one may have an impact on parking and lessen the demand for parking. There are adequate and appropriate facilities being provided. Finally there will be

no adverse impact on affordable housing. Therefore the petitioner meets the requirements for a special permit under **Section 9.05** of the Zoning By-Law.

Zoning Board Member Hussey inquired as to whether the property was a part of a condominium association. Attorney Allen responded in the affirmative.

Zoning Board of Appeals Chairman Jesse Geller asked if anyone present wanted to speak in favor of the application. A number of parties spoke in favor.

Mr. Geller asked if anyone wanted to speak in opposition to the application. No one spoke in opposition.

Timothy Richard, Planner for the Town of Brookline, delivered the findings of the Planning Board:

FINDINGS

Section 4.07 – Table of Use Regulation, Use#18a (amended TM spring 2012)

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

Section 6.02.1.b – Off-Street Parking Space Regulations

	Required	Existing	Proposed	Finding
Parking	4	0	0	Special Permit*

* The Board of Appeals, by *special permit* may waive up to 10 parking spaces for any increased parking requirement when a change or expansion of a non-residential use in a business district is proposed. The applicant is requesting 4 parking spaces to be waived. *Special permit required.*

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming structure or use.

The Planning Board is supportive of this proposal. The use appears to be an appropriate one for the space, and is not expected to detract from the surrounding neighborhood. The increase in floor area at the basement level will allow for a more usable basement space for the business. The business is located along the MBTA Green Line, and can be accessed by public transportation, therefore the

Planning Board supports the waiving of 4 parking spaces required for the proposed Yoga Studio by special permit. Therefore, the Planning Board recommends approval of the plans by Studio Luz Architects, LTD, dated 3/5/13, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final floor plan proposed subject to the review and approval of the Assistant Director of 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Yanovich, Head of the Building Department, to deliver the comments of the Building Department. Mr. Yanovitch, stated that the Building Department had no objections to the relief sought under this application. The relief requested is minimal, the use is compatible with the area, and the Building Department will work with the Petitioner if relief is granted to ensure all codes are complied with.

In deliberation, Board Member Hussey asked about FAR. Mr. Yanovich stated that the FAR was 1.0 and that the property was well under the maximum allowed under the Zoning By-Law.

Board Member Zuroff stated that he is in support of the relief and that parking does not seem to be an issue Board Member Hussey concurred with Mr. Zuroff's statement and stated his support for granting relief.

Zoning Board of Appeals Chairman Geller stated that he felt relief was proper and that the parking requirement should be waived, adding that application of the waiver to this type of business and property is exactly the purpose for which the Zoning By-Law was amended. Zoning Board of Appeals Chairman Geller further stated that the elements under **Section 9.05** of the Zoning By-Law were met.

The Board then determined, by unanimous vote that the requirements for Special Permit relief from Sections 4.07; 6.02; 6.02.1.b; and Section 8.02.2 of the Zoning By-Law were met. The Board made the following specific findings pursuant to Section 9.05 of the Zoning By-Law:

- 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.

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

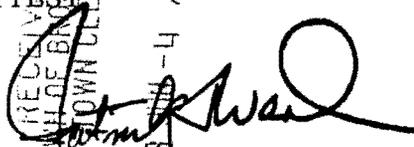
- 1. **Prior to the issuance of a building permit, the applicant shall submit a final floor plan proposed subject to the review and approval of the Assistant Director of Regulatory Planning.**
- 2. **Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for 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; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Unanimous Decision of
The Board of Appeals



Jesse Geller, Chairman

Filing Date: June 4, 2013

A True Copy
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TOWN CLERK
JUN 4 9:04


Patrick J. Ward
Clerk, Board of Appeals