



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair

RECEIVED
OCT 18 5:11 PM '11
TOWN OF BROOKLINE

RECEIVED
OCT 17 7:21 PM '11
TOWN OF BROOKLINE

Town of Brookline

Massachusetts

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

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2011-0052

Petitioner, Nida Pongsanarakul, applied to the Building Commissioner for permission to increase the seating in her restaurant at 411 Harvard Street. The application was denied and an appeal was taken to this Board.

On September 29, 2011, 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 November 10, 2011, at 7:15 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 October 27, and November 3, 2011, 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: PONGSANARAKUL, NIDA
Owner: PONGSANARAKUL, NIDA

Location of Premises: **411 HARVARD ST**
Date of Hearing: **November 10, 2011**
Time of Hearing: **7:15 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. 6.02; Table Of Off-Street Parking Space Requirements, variance required.**
- 2. 6.02.1.b; Of Off-Street Parking Space Regulations, special permit required.**
- 3. 8.02.2; Alteration or Extension, special permit required.**

of the Zoning By-Law to **increase the seating at your restaurant from 20 to 39 at 411 HARVARD ST.**

Said premise located in a **L-1.0 (LOCAL) business 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.

**Enid Starr
Jesse Geller**

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 Lisa Serafin and Enid Starr. The case was presented by the petitioner, Nida Pongsanarakul.

Ms. Pongsanarakul referencing the Planning Board report, described 411-413 Harvard Street as an interior double storefront located in a single story commercial property that contains three storefront businesses. The property is located just outside of Coolidge Corner, at the intersection of Harvard and

Fuller Streets. Parking for these businesses is provided behind the building in a small 8-10 car parking lot accessed off Fuller Street.

Ms. Pongsanarakul who operates, Dok Bua Thai Restaurant, said she applied to the Board of Selectmen for a license transfer due to a change in ownership. Upon receipt of the application, it was discovered that she had a license for only 20 seats when there are actually 40 seats in the restaurant. The seats are configured with 8 four-person tables and four two-person tables. The Building Code allows up to 49 occupants in the building; she said that she intends to retain the 40 seats and the remaining nine occupants include one manager, three servers, three chefs and two kitchen aids.

The Chairman asked whether anyone wished to speak in favor or in opposition to the proposal. No one rose to speak.

Courtney Synowiec, Planner, delivered the findings of the Planning Board.

Section 6.02 – Table of Off-Street Parking Facilities

Eating establishments that are less than 5,000 square feet require one parking space per four seats in a zoning district with an allowed FAR of 1.0. The additional 20 seats require a total of 5 parking spaces. Under **Section 6.02.1.b** of the Zoning By-Law, the Board of Appeals may waive up to 10 parking spaces of any increased requirement when a non-residential use in a business district expands. The applicant is seeking a special permit to waive the 5 parking spaces associated with the increase use. *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.

Ms. Synowiec stated that the Planning Board was supportive of the proposed legalization of the additional 29 seats. The applicant had enough interior square footage to accommodate the amount of seating under the Building Code and the installation of these seats does not appear to have created any detrimental impacts on the neighborhood. The Planning Board noted that should the new restaurant owner want to install any new signage or perform any façade alterations, she should seek Planning

Board review and approval for those modifications. Therefore, the Planning Board recommended approval of the plans by The Architects Forum, dated 1/3/11, subject to the following condition:

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 architect; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard stated that the additional seats could be accommodated within the existing structure and recommended approval of the requested relief.

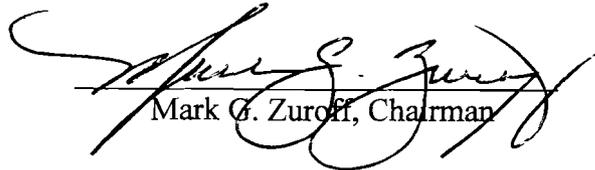
The Board, having deliberated on this matter and having considered the foregoing testimony, concluded that it was desirable to grant special permit relief from Sections 6.02.1.b and 8.02.2 of the Town of Brookline Zoning By-Law and made the following specific findings pursuant to Section 9.05 of the 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 condition:

- 1. 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 architect; and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Unanimous Decision of
The Board of Appeals



Mark G. Zuroff, Chairman

Filing Date: November 21, 2011

RECORDED
TOWN OF BIRCHMERE
TOWN CLERK
2011 NOV 21 A 8:06

A True Copy

ATTEST:



Patrick J. Ward
Clerk, Board of Appeals