



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

Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2011-0069

Petitioners, Nova Investments MA LLC, applied to the Building Commissioner for permission to convert the existing structure at 39 Harvard Street into a Health/Fitness club. The application was denied and an appeal was taken to this Board.

On 15, December 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 12, January 2012, 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 his 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 29, December, 2011 and 5, January 2012, 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: NOVA INVESTMENT MA LLC C/O HUANG CONNIE

Owner : **NOVA INVESTMENT MA LLC C/O HUANG CONNIE**
Location of Premises: **39 HARVARD ST**
Date of Hearing: **January 12, 2012**
Time of Hearing: **07:00 PM**
Place of Hearing: **Selectmen's Hearing Room, 6th. floor**

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

4.07; Table of Use Regulations Use #18a, special permit required.

Of the Zoning By-Law to conduct a Health and Fitness Club

at **39 HARVARD ST**

Said Premise located in a **G-2.0 (General) 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 617-730-2134 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.***

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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, Jesse Geller and Board Members Jonathan Book and Mark Zuroff. Attorney Robert Allen, 300 Washington St., Brookline, MA presented the case on behalf of the petitioner.

Attorney Allen described 39 Harvard Street is a two-story commercial building located in Brookline Village on Harvard Street between Linden and Pierce Streets. The first floor of the building was occupied by Heads Up Salon, but is now proposed to be converted to a gym. The neighborhood is characterized by a mix of one to three-story commercial and residential buildings oriented to a pedestrian scale, with nearby government and religious institutions.

Attorney Allen said that his client, Lana Lemeshov, who is a Brookline resident, will be renting this location from Nova Investments LLC. Ms. Lemeshov bought a KoKo Fitness franchise after being a customer at one on Cape Cod. KoKo Fitness is located throughout the Country with approximately 11 in Massachusetts. It is not a “traditional gym” but a technology driven lifestyle concept that promotes and supports a healthier way of life. It combines time-efficiency with health, delivered as part of a person's daily routine (a quick 30 minutes workout). The design only allows a maximum of 12 members in the club at one time, as a result there is low demand on parking space. There are no group classes in this concept, thus no large influx of demand on parking and there are no lockers or showers, limiting time on property. Attorney Allen went on to explain that there will be around 4 people working at the studio covering different hours of the day, and at certain times of the morning and evening there will be no employees and customers will enter using a key-less security card.

Attorney Allen explained that the Planning Board had some concerns about the evening hours when there would be no employees. The Petitioner had requested 8-11, but the Planning Board felt that 10:00 p.m. was better suited. Attorney Allen stated that since the Planning Board meeting he has since learned more about the security systems employed by KoKo Fitness, including that the premises would have: a dedicated 911 phone installed at the club; surveillance cameras installed at the premises that include a DVR system for recording and storing the images as well as the ability of the owner to personally monitor all the cameras remotely from a laptop, Ipad or smartphone. The security system will consist of contact sensors on all the doors-and a motion detector covering the entire interior of the location. These will trip a siren and then cause a call to the 24 hour monitoring station who then would call the Brookline police dept. As for the clients using the machines, there will be wireless/waterproof panic pendants that people can

wear while inside the premises. If there is an emergency the client can press the panic button on the pendant for the monitoring company to dispatch police in that case as well. Attorney Allen explained that a 10:00 p.m. closing would be the earliest that any KoKo Fitness facility closes throughout the Country, and suggested a 11:00 p.m. closing.

Attorney Allen explained the appropriateness of the facility to the neighborhood, the improvements that would be made by the Petitioner to an otherwise empty store front, and how the new use would have little effect on traffic due its nature and that a majority of clientele would be from the immediate area.

Chairman Geller asked whether anyone in attendance wished to speak in favor of or against the proposal. No one rose to speak.

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

FINDINGS

Section 4.07 -Table of Use Regulations, Use #18a: Private health and fitness clubs, operated for profit and for members only, solely for the purpose of providing physical fitness, exercise, therapy, rehabilitation and healing require a **special permit** in G districts.

Ms. Synoweic reported that the Planning Board was supportive of the proposal to grant a special permit for a health club at 39 Harvard Street. There are very few residential buildings within the vicinity of the property and it is not anticipated that the early opening or later closing times will be disruptive to the neighborhood. However, the Planning Board has some concerns with regard to security as the building will be open for several hours a day without staff present. To address these concerns, the Planning Board requests the applicant reduce their operating hours and close at 10:00 p.m. instead of midnight, as proposed. In addition, since the club will be monitored remotely, the Planning Board would like the applicant to submit plans for their monitoring system to the Brookline Police Department as well as the Building Department. The Planning Board believed the location at 218 Washington Street is an appropriate location for a health club of this variety. Therefore, the Planning Board recommended approval of the special permit under Section 4.07 of the Zoning By-law for Use #18a, subject to the following conditions:

1. The club's hours of operation shall be limited from 5:00 a.m. to 10:00 p.m. and from 8:00 a.m. to 7:00 p.m an on-site staff person shall be present.

2. Prior to the issuance of a certificate of occupancy, the applicant shall submit plans for their monitoring system and proposed security measures to the Brookline Police and Building Departments.
3. Prior to the issuance of a building permit for any sign or façade alterations, the applicant shall submit sign and façade plans subject to the review and approval of the Planning Board.
4. The applicant shall submit evidence the decision has been recorded at the Registry of Deeds to the Building Commissioner within 45 days of the filing date of the decision.

The Chairman then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard said that the relief requested was entirely within the scope of Use #18a. He reported that this particular use item as defined in the Zoning By-Law is not limited in size. Mr. Shepard said that he believed this use, at this scale, will serve the needs of the neighborhood without any negative impact. He said that there is no need to include the security measures to the Building Department as that was not within his purview, but did recommend that the Petitioner speak with the Fire Department about installing a knock box outside the building. He stated he was supportive of the proposal.

The Board questioned the closing times of other gyms and stores within the immediate area of the Village. Ms. Synoweic stated that it ranged in times from 9:00 pm to 11:00 p.m., but most gyms closed by 10:00 p.m. The Board briefly discussed the conditions imposed by the Planning Board and concluded that the staffing issue was outside their purview, but felt that the security, lighting and safety issues were adequately addressed by the Petitioner and felt that a 11:00 p.m. closing is acceptable.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant a special permit and that the petitioner has satisfied the requirements necessary for relief under Section 4.07, use #18a and 9.05 of the

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 conditions:

- 1. The club's hours of operation shall be limited from 5:00 a.m. to 11:00 p.m.
- 2. Prior to the issuance of a certificate of occupancy, the applicant shall submit plans for their monitoring system and proposed security measures to the Brookline Police.
- 3. Prior to the issuance of a building permit for any sign or façade alterations, the applicant shall submit sign and façade plans subject to the review and approval of the Planning Board.
- 4. ~~The~~ applicant shall submit evidence the decision has been recorded at the Registry of Deeds to the Building Commissioner within 45 days of the filing date of the decision.

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2012 FEB 01 11:17

Unanimous Decision of
The Board of Appeals

Filing Date: February 01, 2012



Jesse Geller, Chairman

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals