



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

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2012 APR -6 AM 10:40
BUILDING DEPT.
TOWN OF BROOKLINE
Town of Brookline
Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2011-0071

Petitioner, Shannon Liss-Riordan, the managing member of Washington 202 LLC, applied to the Building Commissioner for permission to convert the building at 202-204 Washington Street from administrative office space to a 189 seat restaurant (to be known as the "Green Bistro") and administrative office space and construct a 120 s.f. rear addition. The application was denied and an appeal was taken to this Board.

On January 5, 2012 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 February 16, 2012 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 January 26 and February 2, 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: Shannon Liss Riordan
Owner: Washington 202, LLC
Location of Premises: 202 WASHINGTON ST
Date of Hearing: February 16, 2012
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 a special permit from

- 1) 5.20; Floor Area Ratio, variance required.**
- 2) 5.09.2aandk; Design Review, special permit required.**
- 3) 5.43; Exceptions to Yard and Setback Regulations, special permit required.**
- 4) 5.60; Side Yard Requirements, variance required.**
- 5) 5.70; Rear Yard Requirements, variance required.**
- 6) 6.02; Table of Off-Street Parking Requirements, variance required.**
- 7) 6.06; Off-Street Loading Regulations, to be determined.**
- 8) 8.02.2; Alteration or Extension, special permit required.**
- 9) Modification, as necessary, of Board of Appeals Decisions #1883,2086,2464, and 3629.**

of the Zoning By-Law to construct a parking area to convert the existing building into a restaurant with seating for up to 189 patrons and construct an addition of 120sf. at 202 WASHINGTON 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 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalandar/?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 were Board Members, Jonathan Book, Lisa Serafin, and Mark Zuroff. The case was presented by the attorney for the petitioner, Robert L. Allen Jr., 300 Washington Street, Brookline MA 02445. Also in attendance was the petitioner Shannon Liss-Riordan, managing member of Washington 202 LLC.

Mr. Allen described the property located at 202 Washington Street, Brookline, Massachusetts as well as the intention of the petitioner if relief is granted, explaining: The petitioner purchased this property about a year ago from an affiliate of Brigham and Women's Hospital for the purposes of bringing back a restaurant to this location. Their purchase ensures the property would be subject to real estate and personal property taxes. Prior restaurants go back about 80 years at this location include Bok Choy, Pacifico, Davios and Village Coach House. The goal of the petitioner is to bring some life to this wonderful building with the grand front façade and make a minor 120 ft addition to the rear of the building just to make it more serviceable for the staff of the restaurant. Mr. Allen explained that the restaurant will occupy the basement, first and the second floor, with a function room on the second floor where there was once an apartment and now an office. The fare will be American cuisine, showcasing what regional farmers have to offer with a variety of seasonal dishes. Ms. Liss-Riordan's cousin is a master chef in Austin, Texas and he will be moving up here to open the restaurant. The current concept is to have a real family restaurant where parents can dine on the first floor and children can eat in the downstairs level, ordering off a different menu under the supervision of staff. Mr. Allen suggested that this concept puts non-drivers in the basement, which reduces the number of vehicles. There will also be a take-out counter with a separate entrance on the first floor (using an existing doorway). The third floor of the building will remain as administrative office space, either for the applicant or as a rental unit.

When last used as a restaurant there were 126 seats. The current proposal is for 189 seats (due to the 2nd floor function/overflow area) but that number may come down as plans are finalized.

Mr. Allen provided the Board with visual plans of the premises and described the change of entrance way on the façade of the building, general flow of the restaurant, floor plans on all three floors, and described the proposed addition in the rear which would facilitate employee exit/entrance from the second floor. Mr. Allen discussed several zoning issues regarding the proposal. He first went into detail regarding Design Review, pursuant to Section 5.09.2.a & k. Regarding the relation of buildings to the form of the streetscape and neighborhood, Mr. Allen stated that there are no proposed alterations to the front façade. There will be signage, which will need approval and the removal of the interior window coverings on the first floor will help reactivate this storefront and this section of the streetscape. Regarding parking, Mr. Allen stated that there is no parking on site, but the site has previously been a restaurant for many years. The property is located within one block of the MBTA D-line Brookline Village T-stop, bus stops for the #60, #65 and #66 bus lines, and three public Town-owned parking lots. Close attention will have to be paid to monitoring the deliveries to avoid traffic impacts on the Washington Street/Route 9 intersection.

Mr. Allen also discussed issues regarding the Special Permit, pursuant to Section 9.05, stating that the ZBA had found on three (3) previous occasions that the requirements of Section 9.05 were met prior to the granting of relief in the prior petitions relating to this site. Further, under Section 5.43, the ZBA may waive dimensional requirements by special permit if the applicant provides counterbalancing amenities. Right now the building goes all the way to the lot line, a 10' x 12' single story stair addition to the rear of the building is being proposed to accommodate accessibility to the second floor of the restaurant for employees. The new addition will be clad in clapboard, and will be pushed way in from the current lot line. This addition will not be visible from any street. As a counterbalancing amenity

Mr. Allen proposed - and the Planning Board agreed - that replacing the vinyl on the two bump outs in the rear of the building with clapboard to match the addition is an adequate amenity as this material is more appropriate for a building with this significance. There will be new energy efficient mechanical equipment installed on the roof to accommodate a charcoal filter to assist in the elimination of odors. Thus, in looking at this addition, Mr. Allen stated that (1) the specific site is an appropriate location; (2) there will be no adversely affect the neighborhood; (3) no nuisance or serious hazard to vehicles or pedestrians exists; (4) adequate and appropriate facilities will be provided for the proper operation; and (5) development will not have a significant adverse effect on the supply on housing available for low and moderate income people.

Chairman Book asked whether there would be any visual impact to the abutters. Mr. Allen stated that the visual impact would be minimal and that any change would be offset by an updating of ventilation on the exterior of the building. Chairman Book then asked Mr. Allen to address the variance requirements. Mr. Allen stated that under Section 5.20, the proposed increase caused by the addition will necessitate a variance. Again, Mr. Allen stated that the Board found on three (3) previous occasions that the requirements for a variance had been met and granted similar requests for relief. A prior variance at this location was granted for an 89 sf increase. The requested increase by the petitioner is for only 120 sf to provide staff with the ability to go from the kitchen up to the 2nd floor rather than going all the way around to the front of the building to go up the stairs. This proposed addition is not visible from the front of the building and does not in any way effect the streetscape. Further, the entire structure is bounded by the property line. Because the lot is enclosed on three sides, and there is no access to the rear of the property, there is no ability to find another location for this stairwell, and the full beneficial use of the parcel is inhibited, resulting in financial hardship to the petitioner. So the uniqueness of the shape of the structure – compared to others in this zoning district - prevents the Petitioner from having

an alternative way to accomplish this goal. In fact, the property is so tight and the building so old there is not even a rear stairwell and a long time easement is in place for the use of the fire escape for egress to the rear, and for storage of waste materials under the fire escape. This creates a substantial hardship to the operation of the restaurant, and this 120 foot addition can be done without any detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-law.

Board Member Serafin asked how the Petitioner planned to deal with trash. Mr. Allen stated that the Selectmen would make a solid trash removal plan a condition of the liquor license, which is on for a hearing Feb. 28, 2012. Mr. Allen stated that the trash plan would be similar to the local restaurant La Morra, with trash picked up daily from the front portion of the building. The rear of the property is somewhat unfeasible as it would be a tight space for a garbage truck. Chairman Book inquired as to why the second floor addition was needed. Mr. Allen stated that the bump-out on the second floor is proposed to enclose a staircase leading the rear exit. In order to have the swing room for the stairwell, the bump out is required. Other restaurants in this space didn't use the second floor for functions and did not require a means of egress. Chairman Book inquired further about the uniqueness of this structure. Mr. Allen stated that it encompasses the entire footprint of the lot, and while many buildings in the area encompass the width of their respective lots, it is very rare to have the full lot encompassed with no parking or additional space in the rear. Mr. Allen also state there is a hardship – in order to use the second floor as a restaurant, which allows the petitioner the ability to make the restaurant financially viable, the addition is required. There is no other viable way to put a staircase in the structure as it stands.

Mr. Allen then discussed parking spaces pursuant to Section 6.02. He stated that the restaurant with 189 seats and office use would require a total of 39.8 or 40 spaces, but where the office is not being changed – as is the case here – the focus would be on the part of the building that is changing its use or

the 189 spaces which would require 38 spaces (5 seats for every one space or 189 divided by 5). There would be a credit of 10 parking spaces (which would be credited from the existing use) leaving a need for 28 additional parking spaces. This does not even take into account that fact that the petitioner envisions the 2nd floor as more of a function room and the basement serving mainly children. Pursuant to Sec 6.02.1.b this Board can waive up to 50% by special permit if certain provisions are met, leaving the need for a variance for 14 parking spaces. It is important to note that if this restaurant, which had been a restaurant for over 80 years, did not change its use approximately a few years ago, this request would be for a variance for only 2 spots. Mr. Allen suggested as a business owner in Brookline Village, this is one business district that can handle additional parking, with plenty of parking spots available during the peak times of the restaurant (dinner hours) including 46 spots in Webster/Kent – 49 spots in Lower Kent and about 68 spots along Station Street all of which have vacancy at after work hours; there is also plenty of rental parking at the garages at 1 and 2 and 10 Brookline Place. There is also a fallback, as was done by Davios, to have valet parking. Further, Mr. Allen stated that there is adequate public transit (bus and train) and plenty of public parking available during peak evening hours in Brookline Village. The petitioner will further provide incentives for our employees to use public transportation.

Mr. Allen concluded by stating that the uniqueness of the shape of the structure being landlocked and encompassing the entire lot boundary prevents the Petitioner from having the ability to create any parking in the rear of the property creating a hardship. There is a long history of this property being used as a restaurant, and there were no found no record of any complaints about the parking, either the lack thereof or the need for more, or causing traffic in front of the establishment. In fact it is important to note that on two separate occasions this Board granted a relief to reduce parking and that was at a time when there was actually more completion for parking during the evening hours as the old Hearthstone Plaza theater was located 100 yards from this location. The benefit of this hindsight clearly

shows that this variance can be issued without any detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the by-law. And for the reasons previously stated, the Special permit standard can be met at this location

Chairman Book asked why the Petitioner was using a five chair standard for calculating parking spaces. Courtney Synowiec from the Planning Department stated that the restaurant qualifies as a "public assembly" in a G.2 district having more than 5,000 sq.ft. All restaurants are categorized as "public assembly" under 6.02.3. Chairman Book asked whether the petitioner has considered renting parking spaces. Mr. Allen stated that while they originally considered valet parking, they thought it could become an issue with neighbors. If parking becomes an issue they will look into renting spaces. Chairman Book inquired as to the historical significance of the building. Ms. Synowiec from planning stated that it was built in 1869 and was the first brick building in Brookline Village.

Chairman Book asked whether anyone in attendance wished to speak in favor of or against the proposal. Robert Daves of 9 Upton Road spoke in favor of the petition, stating that he is neighbors with Ms. Liss-Riordan and feels that a locally sourced and operated restaurant would be good for the area. Linda Plazonja, 167 Walnut Street, spoke in support of the petition. Ms. Plazonja is a professional chef and blogger and thinks that Green Bistro would be an excellent addition to the community and would support sustainable practices. Karen Kraut of Coolidge Corner spoke in favor of the proposal. Ms. Kraut thought the child facility would be a welcomed addition to dining in the area.

No one rose to speak against the proposal. Susan Hoffman, who manages the property directly behind 20-2 Washington Street, was concerned about construction on the site, but did not oppose the project. Susan Weiss, 10 White Place, did not oppose the project, but opposed the addition of valet parking, if the petition intended to do that in the future.

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

Section 5.09.2.a & k – Design Review: Alterations to the façades of buildings on Beacon Street require design review. A community and environmental impact and design standards statement has not yet been submitted, but the most applicable standards are as follows:

Relation of Buildings to the Form of the Streetscape and Neighborhood: The applicant is not proposing any alterations to the front façade at this point in time. However, the applicant will be submitting plans for the installation of signage [there currently is none on the building] and removing the interior window coverings on the first floor which will help reactivate this storefront and this section of the streetscape.

Circulation: The property currently has no parking on site, but has previously been a restaurant for many years. The property is located within one block of the MBTA D-line Brookline Village T-stop, bus stops for the #60, #65 and #66 bus lines, and three public Town-owned parking lots. However, the restaurant use will require deliveries and attention should be paid to the size of the delivery vehicles and the times of the day during which they make deliveries to avoid traffic impacts on the Washington Street/Route 9 intersection.

Advertising Features: The applicant will need to submit any signage for the new restaurant to the Planning Board for review and approval.

Section 5.20 – Floor Area Ratio

Floor Area	Allowed	Existing	Proposed	Finding
Floor Area Ratio	2.0	3.03	3.06	Variance
Floor Area Ratio (% of allowed)	100%	152%	155%	
Floor Area (s.f.)	3,732	5,660	5,780	

Section 5.60 – Side Yard Setback

Section 5.70 – Rear Yard Setback

Section 6.02 – Table of Off-Street Parking Requirements

Section 6.06 – Off-Street Loading Requirements

Dimensional Requirements	Required	Existing	Proposed	Relief
Side Yard Setback	0'	0'	0'	Complies
Rear Yard Setback	7.8'	Est. 1'	Est. 1'	Special Permit*
Number of Parking Spaces	29.5**	0	0	Variance
Number of Loading Bays	1	0	0	Variance/Pre-existing Nonconforming

* Under Section 5.43, the Board of Appeals may waive dimensional requirements by special permit if the applicant provides counterbalancing amenities. The applicant is proposing to make improvements to the refuse storage in the rear of the building, install new venting systems, return the property to the tax rolls and return activity to this section of the streetscape as counterbalancing amenities.

** The restaurant and office uses require a total of 39.8 parking spaces. However, there is a theoretical parking credit from the previous use of 10.3 parking spaces bringing down the requirement to 29.5 parking spaces.

Section 8.02.2 – Alteration or Extension

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

Modifications of Board of Appeals Decisions #1883, 2086, 2464, 3629 as needed.

Ms. Synowiec reported that the Planning Board was supportive of this proposal. The Planning Board believes the installation of a large restaurant in this location would be a benefit to the Brookline Village neighborhood. The restaurant could potentially serve as an anchor to the business district which will increase pedestrian traffic and thereby create an economic spillover effect benefitting neighboring retail businesses. Although the applicant is asking for relief for up to 189 seats, the restaurant will likely have fewer seats and will only be used at full-capacity when the function room is also in use. Although the Planning Board believes there is adequate public transit and public parking available during peak evening hours in Brookline Village, the Planning Board suggests the applicant may want to rent additional parking from the 10 Brookline Place West and 2-4 Brookline Place garages or have a valet service so as to make parking easier for their patrons who choose to drive to the restaurant. The Planning Board is concerned, however, by the potential impact on circulation at the Route 9/Washington Street intersection caused by large delivery trucks due to the lack of loading bay. There is no metered parking in front of the building, which should prevent double parking by trucks but will not prevent illegal standing by delivery vehicles. Although this is a common condition in Brookline's commercial districts, this particular location is troubling given its proximity to Route 9 and the high traffic volumes at peak hours. In order to prevent circulation issues, the Planning Board does not believe full size delivery vehicles should be allowed at this location from the hours of 7:00-9:00 a.m. and 3:00-7:00 p.m. to avoid conflicts with school and rush hour traffic.

Therefore, the Planning Board recommends approval of the plans by ACVP Design, dated 11/10/11, subject to the following conditions:

1. Prior to the issuance of a building permit, final building elevations and utility plans, indicating all rooftop units and screening, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.

2. Plans for any and all signage shall be reviewed and approved by the Planning Board prior to installation.
3. All refuse shall be stored securely in rodent proof containers. A weekly rodent extermination plan shall be implemented and maintained while the restaurant is in operation.
4. 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.
5. The building shall be appropriately fitted with an odor control system to ensure neighboring residences are not negatively affected by food preparation odors, subject to the review and approval of the Building Commissioner. All filters shall be appropriately maintained and replaced as needed.
6. Prior to issuance of a certificate of occupancy, an engineer shall certify to the Building Commissioner's satisfaction that all of the building's HVAC units and other utilities comply with the Town's Noise Control Bylaw, and all such units shall be kept in good working condition as installed.
7. Deliveries for the restaurant by large trucks with more than a single rear axle shall not occur during the hours of 7:00-9:00 a.m. and 3:00-7:00 p.m. No delivery vehicles shall park on Station Street, White Place, Davis Court or Davis Avenue at any time.
8. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered land surveyor or engineer; 2) final floor plans and elevations, stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

Board Member Zuroff inquired as to the location of refuse when not in the front of the premises for pick up. Ms. Synowiec stated that the petitioner has an easement to use the property located directly below the stairs in the rear of the premises. The Planning Board is satisfied that it is a workable plan.

Chairman Book then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard stated that this is a great building in Brookline Village. The final seat count will be determined by the Building Department, but will not exceed the 189 that the petitioner is seeking. The Building Department will require a construction management plan, which will include: parking plan for construction, hours of construction, hours of deliveries, police

details, and location of the construction dumpster. Mr. Shepard reported that the Building Department was supportive of the requested relief and that the proposed addition will make the building safer.

The Board, having heard all the testimony, deliberated on the merits of the application. Board Member Serafin stated that the requested FAR relief is small, but does lead to a more intensive use. This, however, might be what is required to succeed in this space. There is significant parking in the area, especially at night, and the applicant is proposing significant counterbalancing amenities. Board Member Zuroff agreed with the comments by Board Member Serafin and noted that the building is historically significant, and has been used as restaurant before. Its uniqueness, location, and history support the requested variance. Chairman Book discussed the FAR request under section 5.20 of the bylaw and the variance standards under M.G.L. c. 40A. Chairman Book concluded that because of the uniqueness of the building, a literal enforcement of the bylaw would create a substantial financial hardship and a grant of a variance with respect to the FAR would not cause substantial detriment to the public good or substantially derogate from the intent or purpose of the bylaw. Regarding the request for a relief from the off-street parking requirements under section 6.02 of the bylaw, Chairman Book stated that it important to note the history of the building as a restaurant, the lack of usable area on the property for parking considering the footprint, as well as the proximity of the site to public transportation and public parking. Chairman Book concluded that a special permit could be granted under section 6.02.1.b for 50% of the additional spaces required under the bylaw. He further concluded that because of the uniqueness of the building, a literal enforcement of the bylaw would create a substantial financial hardship and a grant of a variance with respect to the remainder of the additional spaces required under the bylaw would not cause substantial detriment to the public good or substantially derogate from the intent or purpose of the Bylaw bylaw. Regarding the special permit required under section 5.60 for the rear yard setback, the Board found that there are sufficient

counterbalancing amenities to warrant a grant of special permit. The Board also concluded that absence of a loading bay was a pre-existing condition and that no relief under Section 6.06 of the bylaw was required.

The Board then determined that the requirements of M.G.L. c. 40A had been met to warrant the grant variances with respect to the requirements of Sections 5.20 and 6.02 and that requirements of Section 9.05 had been met to warrant the grant special permits with respect to the requirements of Sections, 5.09.2a & k, 5.70, and Section 8.02.2. 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. The development as proposed will not have a significant adverse effect on the supply on housing available for low and moderate income people.

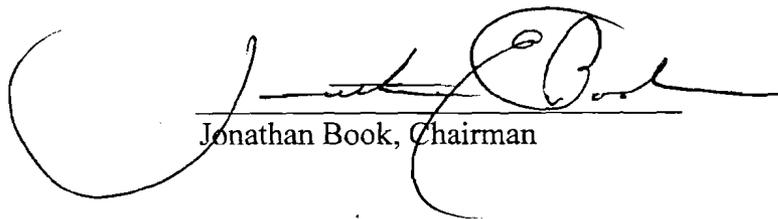
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1. Prior to the issuance of a building permit, final building elevations and utility plans, indicating all rooftop units and screening, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2. Plans for any and all signage shall be reviewed and approved by the Planning Board prior to installation.**
- 3. All refuse shall be stored securely in rodent proof containers. A weekly rodent extermination plan shall be implemented and maintained while the restaurant is in operation.**
- 4. 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.**

5. The building shall be appropriately fitted with an odor control system to ensure neighboring residences are not negatively affected by food preparation odors, subject to the review and approval of the Building Commissioner. All filters shall be appropriately maintained and replaced as needed.
6. Prior to issuance of a certificate of occupancy, an engineer shall certify to the Building Commissioner's satisfaction that all of the building's HVAC units and other utilities comply with the Town's Noise Control Bylaw, and all such units shall be kept in good working condition as installed.
7. Deliveries for the restaurant by large trucks with more than a single rear axle shall not occur during the hours of 7:00-9:00 a.m. and 3:00-7:00 p.m. No delivery vehicles shall park on Station Street, White Place, Davis Court or Davis Avenue at any time.
8. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance with the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered land surveyor or engineer; 2) final floor plans and elevations, stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

The Board voted to modify Board of Appeals Decisions #1883 (1974), 2086 (1976), 2464 (1981) and 3629 (2000) to the extent necessary to be consistent with the relief granted by this decision.

Unanimous Decision of
The Board of Appeals



Jonathan Book, Chairman

Filing Date: April 5, 2012

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals