



BOARD OF APPEALS
Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Robert De Vries

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Town of Brookline

Massachusetts

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2010-0015

Petitioner, Holmes Nominee Trust ("Petitioner"), applied to the Building Commissioner for a permit to infill a section of the second floor and change the use of the second floor at 325 Harvard Street from retail to a health club. The application was denied and an appeal taken to this Board.

On April 8, 2010 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. The Board then fixed the date of May 20, 2010 at 7:30 p.m. in the Selectmen's Conference Room on the sixth floor of Town Hall as the time and place of the hearing. Notice of the hearing was mailed to petitioners and their attorney, (if any of record), to owners of 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 29 and May 6, 2010 in the Brookline Tab, a newspaper published in Brookline. Copy of said notice as follows:

**TOWN OF BROOKLINE
MASSACHUSETTS
BOARD OF APPEALS**

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: Holmes Nominee Trust
Owner: Holmes Nominee Trust
Location of Premises: 325 Harvard Street
Date of Hearing: May 20, 2010
Time of Hearing: 7:30 p.m.
Place of Hearing: Selectmen's Hearing Room, 6th Floor.

A public hearing will be held for a Special Permit from:

4.07; Table of Use Regulations, Use #18, special permit required.
5.06.4.b, Special District Regulations; Special Permit required.
5.09.2.a&h; Design Review, special permit required.
5.43; Exceptions To Yard And Setback Regulations, special permit required.
5.70; Rear Yard Requirements, variance required.
6.02, Table of Off-Street Parking Requirements; (Change of Use, 6.01.2) Variance required.
6.02.1.b; Off-Street Parking Space Regulations, special permit required.
8.02.2; Alteration or Extension; special permit required

of the Zoning By-Law to infill a section of the second floor and change the use from retail to a health club per plans at 325 Harvard St.

Said premises is located in an G-1.75 (CC) general business 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.

Enid Starr
Jesse Geller
Robert De Vries

At the time and place specified in the notice a public hearing was held by this Board. Members present were Chairman Enid Starr, Jonathan Book and Robert De Vries.

The Petitioner was represented by Gary P. Lilienthal of Bernkopf Goodman LLP, 125 Summer Street, Boston, MA 02110-1620. Mr. Lilienthal waived the reading of the public notice.

Mr. Lilienthal briefly outlined the application. The area of the building under consideration is the entire second floor and an entryway on the first floor. Petitioner proposes to add a 1,933 square foot infill between two unconnected portions of the second floor on the north side of the building. Most recently, the building was occupied by Barnes & Noble Bookstore, but it vacated the premises eighteen months ago. The second floor has remained vacant during the prior eighteen months, posing a financial hardship to the Petitioner. Mr. Lilienthal then outlined the relief sought.

1. Article IV, Section 4.07 of the Zoning By-law, Use 18, which allows a health and fitness membership club, requires a Special Permit for that use.
2. Article V, Section 5.06.4.b requires a Special Permit due to the location of the building in a Special Use District.
3. Article V, Section 5.09, a Special Permit is required for design review on Harvard Street and in the Coolidge Corner District.
4. Article V, Section 5.43 requires a Special Permit inasmuch as the Petitioner is requesting a 1,933 square foot infill, in part, in a side yard, although the building will not be extended beyond its existing footprint and will only be built up.

5. Article VI, Section 6.02.b.3, requires three additional parking spaces as a result of the 1,933 square feet infill, which may be waived by Special Permit.

6. Article VIII, Section 8.02, a change of a pre-existing, non-conforming structure or use requires a Special Permit.

In addition to the six (6) aforementioned Special Permits, Mr. Lilienthal explained that the Building Department noted that two of the issues which could be addressed by Special Permit could also be addressed by Variance. The variances which could be granted are: (a) construction in the side yard or rear yard under Section 5.70 of Article 5; and (b) the off street parking requirements under Article 6, Section 6.02. Mr. Lilienthal then explained that these can be granted, at the Board's discretion, either by Special Permit or by Variance.

Mr. Lilienthal noted that Healthworks is already a good corporate citizen of the Town of Brookline, having a location at 920 Commonwealth Avenue in Brookline. Mr. Lilienthal then noted that the presentation would consist of four parts: architectural, traffic and parking, Healthworks and legal. Mr. Lilienthal then introduced the team which had been assembled for the project as follows. Mr. Stu Pratt a principal of the Holmes Nominee Trust, the owner. Mark Harrington, Matthew Harrington and Mark Harrington, Jr. the principals and owners of Healthworks. Eric Brown, the Project Architect with PCA Associates, and Robert Michaud, a Traffic Engineering Consultant from MDM Transportation Consultants.

Eric Brown presented the architectural aspects of the proposal. Architectural plans, both rear and front elevations depict no change from existing conditions. The elevation from the north side, with a before and after view, show the infill. Chair Starr asked what was there now, and Mr. Brown responded that the utilities were on the single story roof where the infill would be constructed and they will be moved so as to minimize sight view. Mr. De Vries asked for an explanation as to how the brickwork would be handled with the infill. Mr. Brown explained that the existing brick was painted and the new brick would be painted the same color as the existing wall. Mr. De Vries then asked if the bricks will be “toothed in”, and Mr. Brown explained yes. Harriet Rosenstein, a Town Meeting member from District 9 asked what “toothed in” meant, and Mr. Brown and Mr. De Vries explained that it was a process by which brick from the existing adjacent areas would be removed and new brick would be woven in so as to give the appearance that it was all built at the same time rather than a straight line down where the addition was inserted. Mr. Book asked for the square footage of this tenant’s space. Mr. Lilienthal answered that the tenant would occupy existing square footage of approximately 17,000 square feet and with the addition of 1,933 square feet. The infill would increase the overall gross square footage of the building by approximately 5.6%. Eunice White, Town Meeting member from District 2 asked for a clarification of the statement that the utilities would not be visible and asked if this applied to every direction. Mr. Brown responded that the utilities would be visible if you were 80 feet away on Harvard Street to the north, but that the size of the utilities would diminish with distance, and that they would be blocked by mature trees. From other perspectives, utilities should not be visible.

Robert Michaud from MDM Traffic Consultants advised the Board of the basis for the parking and traffic study. The study was performed in the context of the Coolidge Corner area and considered available public parking spaces within ¼ mile proximity to the site, comparing the historic use and potential use as retail space and the proposed use as a membership health and fitness club. Mr. Michaud pointed out that any comparison to “no use” for the space was neither appropriate nor merited. Mr. Michaud then introduced a chart showing the existing use of the parking facilities at the Healthworks location at 920 Commonwealth Avenue at various times during the day as the basis for measuring the peak periods for use. Ms. Starr asked Mr. Michaud to explain the basis for the number of parked vehicles shown on the chart. Mr. Michaud stated that the parking data was based upon the Healthworks use of the parking garage which is attached to the 920 Commonwealth Avenue facility as evidenced by ticket validations provided at no charge by Healthworks at that location. Ms. Starr asked if there was ever a time when the garage attached to 920 Commonwealth Avenue became full, and there was overflow. Mark Harrington, President of Healthworks stated that he does not believe that a Healthworks customer has ever been turned away from the 920 Commonwealth Avenue garage. While he suspects that the garage may get full during office hours, he is not aware of any examples of overflow based on Healthworks use. Mr. Michaud noted that according to the data provided to him, half of the staff arrives by non-automotive means. He also noted that according to the graph the highest level of activity at Healthworks location is 6:00 p.m. or later and that the early morning and middle of the day are not peak periods. He also noted that this reflects industry trends. Mr. Michaud then introduced a photographic aerial view of the area surrounding the site, and a circle drawn to depict a quarter mile radius. He then noted that within that area there are 427 spaces available for the public use; the Center Street East lot spaces, the Babcock Street lot

spaces and on-street metered parking. Mr. Michaud's staff counted the number of vacant spaces during the hours of concern. During the morning hours, encompassing the 7:45 to 8:15am hours, there were more than 100 vacant spaces counted. At 3:00 p.m., there were more than 131 available spaces. At night during the peak hour of 6:00 p.m. the number of vacant spaces becomes even larger. Mr. Michaud stated that, as instructed, he paid particular concern to the traffic situation between 7:45 and 8:15am, during the Devotion School peak drop-off period. Mr. Michaud stated that there were 100 spaces in the Center Street East lot and 50 spaces in the Babcock lot, which were more than ample capacity during the morning period. Mr. De Vries asked Mr. Michaud whether or not these had been averaged over a number of days. Mr. Michaud responded that this was one representative day between 7:45 and 8:15 a.m. Mr. Michaud went on to note that during the early morning hours, the parking uses did not correspond or conflict with local businesses in the neighborhood. He also noted that a retail use would generate approximately three times the amount of traffic based on industry standards for a retail use versus a membership health and fitness club use. Mr. Michaud noted that the Petitioner's awareness and concern for the Devotion School morning and afternoon pick-up issue will prompt Healthworks to promote preferred parking area for the Center Street East lot for those of its members who do arrive via automobile. They will also be providing a subsidized T-pass program for their employees. Mr. Michaud stated that the Petitioner would favor short term parking at the meters in front of the premises for use during Devotion School peak hours. Mr. Book then asked Mr. Michaud to elaborate on the membership levels, and particularly those members that will be driving to the club. Mr. Michaud stated that the proposed facility, while half the size physically as Commonwealth Avenue, would hopefully remain at the current membership level of about 3,000 members. It was noted that many members of the current

operation reside within the geographic area to which Healthworks wishes to move on Harvard Street. Mr. Harrington added that their heaviest zip code membership for the Commonwealth Avenue facility is the 02446 (Brookline) zip code. Mr. Harrington noted that he expected far fewer people to drive and Mr. Harrington handed out a demographic breakdown of members which was accepted by the Chair and labeled Exhibit 2. Mr. De Vries asked for a clarification as to parking availability and Mr. Michaud informed him that there were 179 spaces. Ms. Rosenstein then asked if those 179 spaces were based on a single day's observation, and Mr. Michaud replied that it was. Ms. White asked if there was a review of the parking when the Coolidge Corner Theater was open. Mr. Lilienthal asked if that question could be deferred, as it was going to be addressed by Mr. Harrington during his presentation. Charlotte Mao, Devotion School parent and PTO Chair, asked if Mr. Michaud knew the date on which the study was done. Mr. Michaud stated that he believed it was on a Thursday. Ms. Starr asked if school was in session on that date and Mr. Michaud informed her that it was. Pam Katz, Town Meeting member from Precinct 9, raised the concern that more parents drive in winter months and asked if that was taken into consideration. Mr. Michaud stated that the study relative to the Commonwealth Avenue operation took that into consideration by looking at 4 days in March. He noted that the study paid specific attention to the potential for conflicts with the Devotion School traffic and noted that the peak use of the health and fitness facility was at and after 6:00 p.m. Ms. Katz then noted that parking is prohibited in the Babcock lot until 8:00 a.m. because there is reserved overnight parking. Mr. Lilienthal asked that it be noted that this was covered in the study which was performed between 7:45 and 8:15 a.m. taking into consideration the fact that the Babcock Street opened to the public at 8:00 a.m.

Mark Harrington, the founder and president of Healthworks stated that he was proud to have been a good corporate citizen and neighbor in Brookline for 19 years at the Commonwealth Avenue and Chestnut Hill locations. He noted they had been in business for 33 years with seven locations currently in the Greater Boston area, two of which in the Boston area were non-profit foundations for inner city members. He noted that they were a family business and that his two sons had joined him in the business. He also noted that he had recently hosted a corporate challenge, which included a group of Brookline policewomen and that Healthworks was recently voted the best women's fitness club in America. Mr. Harrington noted that they do considerable fundraising for "Partners in Health" and that they and their members had recently donated approximately \$85,000 for Haitian health relief. Mr. Harrington stated that they are planning the move to Harvard Street so that they can move closer to their members. Previously, at 920 Commonwealth Avenue, they were known as a "student" health club, but are no longer that, and cater more toward the population in the 02446 (Brookline) zip code. Ms. Starr then asked Mr. Harrington if they were closing the 920 Commonwealth Avenue location. Mr. Harrington answered that they were, in light of the fact that 20,000 people live and 10,000 people work within ½ mile location of the Harvard Street location. He believes that the bulk of the membership would come from the 02446 zip code and would expect many of them to walk to the club. The Harvard Street club would be a much smaller club physically, and would not be expected to receive the peak traffic levels of the other larger locations. Mr. Harrington reported that he spoke with Michael Maynard, Chair of the Coolidge Corner Theater with respect to the theater's concerns. Mr. Harrington reported that the peak hours for use of the fitness and health club were the opposite of those of the theater, and were the opposite of most retail locations. Mr. Harrington expressed that they would not be planning a move to this location if they did not

believe they had enough parking and availability for staff and members and that he did not expect more than 40% of the members to drive to the location. Mr. Harrington also noted that they were proposing to donate a local amenity in the amount of \$10,000 to be spent on improvement of the grounds and playground of the Devotion School.

Mr. Lilienthal noted that the property has remained vacant for 18 months since Barnes & Noble left, thus posing an extreme financial hardship to the Petitioner. He also noted that this is not a question of whether the space should remain vacant or be occupied but is a question of whether Healthworks is suitable for this location compared to another use. He noted that there seemed to be “no evidence of a sigh of relief” for Coolidge Corner with respect to parking and traffic when Barnes & Noble left and that the Healthworks use would not make traffic or parking substantially worse. Under the zoning By-law, the proposed use requires the same parking requirements as the prior retail use. However, a Special Permit is needed for the parking component of the infill portion of the requested relief, regardless of the occupant. The infill, requires three parking spaces which may be waived by Special Permit under By-law Section 6.02.1.b The Petitioner views the infill as a positive, in that the current utilities and iron pipe fence on the only single story part of the building are an eyesore to the abutting area. There will be no detriment to the public caused by the infill. The infill will create a more coherent and compatible space and will have a positive affect on the view of the building from the surrounding areas by relocating the utilities and elimination of the fence. It should also be noted that the muralist who painted the existing mural was consulted and that she felt there would be no adverse affect on the mural as a result of the infill. The affect on the neighborhood and the salutary affect on the intent of the zoning is noteworthy due to the fact that there is no height or

no rear yard issue as a result of the infill. The infill will not physically extend the existing side yard non-conformity beyond its current condition inasmuch as the first floor of the building is already built to the lot line on the Devotion School side and this would only extend that area vertically and in terms of the bulk but not create a greater side yard non-conformity. Mr. Lilienthal noted that actually in the G 1.75 district there is no side yard requirement but because the Petitioner's building abuts a "T" district, a side yard requirement is deemed to exist to the same extent it would if the property were in a T district, that is 20 feet. Since this is an alteration or extension of an existing non-conforming use, Section 8.02 of the By-law, as well as Section 5.43 of the By-law allow this by Special Permit. It should be further noted that the adoption of the side yard of the abutting T district is not what the By-law contemplated here inasmuch as the use in the abutting T District is not a "T" use, but is a municipal use for school purposes. This alone justifies the requested relief.

With respect to the special district requirements under Section 5.60.4.b and the design review criteria under Section 5.09, it was noted that the Petitioner went through an exhaustive design review. The Petitioner reached out to the Devotion School, met with representatives of the Building Department, Planning Department and the Coolidge Corner Theater. They also met with members of the Board of Trustees of the abutting condominium property to the rear and the first floor tenants at the building. In its application to the Zoning Board for the relief requested, the Petitioner addressed all of the criteria under the Section 5.09 review requirement. It should be noted specifically that delivery and loading requirements will be far less than the previous use. There will be no affect on the environment and the streetscape of the building will not be changed. The Petitioner noted that the provisions of Section 6.02, as to parking waivers of the

By-law was recently changed by Town Meeting to be less restrictive than the prior provisions but either the past or current 6.02 requirements for Special Permit for parking waiver of 3 spaces would be met by the existing request. There is no space on the site for parking to be constructed, and due to the existing conditions and shape of the site, no parking can be provided on the site. The Petitioner believes, based on its Traffic Consultant's review, that the demand for parking for the proposed use will actually be less than that for the prior retail use. The Petitioner has tried to be sensitive to the parking issues of the neighborhood and the Devotion School specifically and would note again that the highest parking demand is at and after the 6:00 p.m. hour and that demand would not conflict with any Devotion School use. The Petitioner has also made a significant gesture under By-law Section 5.43 for a donation of \$10,000 for landscaping and improvement to the Devotion School playground area abutting the Petitioner's property.

The Petitioner trusts that the Zoning Board would agree that the space in question is entitled to be occupied, and that Healthworks Health and Fitness Center use is appropriate for this space. This petition is about the appropriateness of this use, an infill which will improve the appearance and utility of the building and the merit of waiving three parking spaces, not whether the property can or should be used in the interest of reduced traffic and parking demand. The Coolidge Corner traffic and parking situation needs to be addressed on a global basis, and the Petitioner would ask the Board that those conditions not be placed on the back of this application. The Petitioner believes that this property and this application should not be held as a lightning rod to the traffic and parking problems and that the Petitioner has made the case that the Special Permits and Variances are appropriate based upon the evidence presented and ask the Board to find accordingly.

The Chair then reviewed certain procedures with respect to hearing from members of the public and town staff. The Chair read into the record an opposition letter as Exhibit 3 and noted receipt of seven letters of support for the project and of eight (8) additional letters in opposition to the proposal. The Chair then asked for anyone in favor of the application who wished to be heard and seeing no hands, moved on to those wishing to be heard in opposition.

The Chair then recognized Scott Gladstone, who wished to submit a traffic report and speak on behalf of his client, Bodyscapes. The traffic report was received and marked as Exhibit 5. Mr. Gladstone introduced himself as an attorney and Town Meeting member in Brookline. He noted that Bodyscapes operates a fitness facility on Beacon Street, in the Coolidge Corner area. Mr. Gladstone noted that the Petitioner deserved to have a tenant and that was better for Brookline and for the tax base, but the question is whether use 18 is the best use for this location. Mr. Gladstone explained to the Board that categorization of this use by Special Permit only was a recognition by Town Meeting of the fact that this use impacts areas and traffic patterns at various times of day. The larger issue which presents itself, according to Mr. Gladstone, is under the Special Permit Criteria Section 9.05, and the adverse effect which this use will have on traffic and parking. While there may be parking available in the morning, the issue is traffic. Mr. Gladstone submitted that the traffic conditions in this area are dangerous and that the proposed use is going to exacerbate drop-off and pick-up issues in the morning and traffic in the evening at the Devotion School. Mr. Gladstone's client, Bodyscapes, is in a new building on Beacon Street that has 20 parking spaces allocated to Bodyscapes' 1200 members. To compare the proposed Healthworks use to Barnes & Noble is not appropriate because Barnes & Noble did not open

until 10:00 a.m. Mr. Gladstone submitted that application of industry standards does not work for this location. It is practical parking availability, not actual parking availability. Mr. Gladstone further believes that Healthworks has understated their membership and that the owners need not jump at the first offer to lease the space. There may be opportunities to fill this space with office uses typical for Coolidge Corner. He went on further to say that the 20% rule of 3,000 is 600 members driving to this location and that is a lot of trips. The Transportation Department is on its third attempt to fix this corridor and Mr. Gladstone noted that the traffic study done by the Petitioner was not done at the peak time of health club use. Mr. Gladstone concluded that the situation being created is at the wrong time when Devotion School has its most dramatic impact.

Mr. Gladstone then introduced Sudea Muthy of Traffic Info, his traffic consultant. Mr. Gladstone had previously submitted to the Board with his remarks a traffic study prepared by Mr. Muthy. Mr. Muthy noted that the Petitioner has stated that the parking information for 920 Commonwealth Avenue is applicable to a potential facility in Coolidge Corner. He submitted that the transferring of that information is inappropriate and that traffic census data for transportation around the 920 Commonwealth Avenue location shows a high use of mass transit and walking. Mr. Muthy submitted that the trips disclosed by the Petitioner would actually be lower than the numbers used in the presentation and the demand for parking would become higher than that which the Petitioner reported. Mr. Muthy further noted that the Petitioner has focused on the morning traffic but the peak demand would be between 6:00 and 7:00 p.m. He also submitted that it would be useful for the Town to look at the existing conditions of how

many vehicles travel Harvard Street and through Babcock to Harvard and that that information is lacking.

Mr. Gladstone then concluded remarks on behalf of his client by asking the Board to recognize that people will drive to the health club on their way to work and coming home from work and that research recognized that phenomenon. Mr. Gladstone acknowledged that Mr. Harrington had a first class business and that unfortunately that would be part of the problem as it was clear that from moving to Coolidge Corner, Mr. Harrington would be hopeful of increasing his membership. Mr. Gladstone compared the 20 spaces available to Bodyscapes in its building to Healthworks having no off-street parking. He submitted that the intensive use would be at exactly the wrong time.

The Chair then asked for comments in opposition from interested parties. Casia Wyner, 31 Gibbs Street, noted that she was a Devotion parent and a member of Healthworks and disagreed with how the current membership base affects the parking at 920. Miss Wyner believes that the Petitioner has misjudged its new membership base. She stated that she lives 4 blocks from the proposed location, but would drive. She stated that the 1 day parking study did not take into account the farmer's market and the study also included Stedman Street, which was reserved for the staff for the Devotion School. Mr. Bruce Wolf of 50 Sussman asked if there would be any noise created which would affect the businesses on the first floor. Mr. Harrington responded that they were going to be very careful on how they have designed the space and intended to be good neighbors. Ms. Starr noted that many of the letters in support which were submitted by the Petitioner and were exhibits entered into the record were from businesses on the first floor. Ms.

Beth Katz, co-chair of the Devotion PTO indicated that there was no designated parking but just permit requirements for teachers, and added that the Transportation Board needed to fast track the issues for parking in the area. Mr. Lilienthal responded to Ms. Katz that Mr. Michaud did not include the parking areas on Stedman and Beal Street as part of its parking count, only the parking lots and non-reserved metered streets/spaces. Mr. Lilienthal also noted that while he respected Mr. Gladstone's comments, he did not agree with them and noted that if Mr. Gladstone's parking and traffic issues were accepted, they would apply everywhere in Coolidge Corner and there would be nowhere in the Coolidge Corner area where a health club would be permitted under Use 18.

The chair then recognized Lara Curtis on behalf of the Planning Board. Ms. Curtis stated that the Planning Board was supportive of the application and the granting of relief. The majority of the Board felt that it was a positive and vibrant use for the space. The Planning Board did not think that the health club would have different peak hours than it stated, and does not expect there to be a significant conflict with traffic for drop-offs and pick-ups at the Devotion School. The majority of the members of the Planning Board felt that the approval of the requested relief would not worsen the situation and recommended approval subject to four conditions. The following is from the Planning Board report submitted to the Board with the requested condition.

SITE AND NEIGHBORHOOD

315-335 Harvard Street is a two-story brick commercial building featuring a rounded corner at the intersection of Harvard and Babcock Streets. The north side of the building is bounded by Devotion School and a mural runs the length of the ground story of this façade, which faces the school playground. There are retail and restaurant spaces on the ground floor, including Citizens Bank and Relax the Back, and the second floor, which is the subject of this application, was formerly occupied by Barnes and Noble.

PETITIONER'S PROPOSAL

The Petitioner, Holmes Nominee Trust, is proposing to construct a one-story addition to fill in a gap on the second floor on the side of the building facing the Devotion School, and change the use on the second floor from retail to a health club. The addition would be 1,933 s.f., approximately 25 feet deep by 70 feet wide. The initial application showed windows on the north façade facing the school yard, but since the lot is on the property line, windows would not conform to the building code. Therefore, the Petitioner has deleted the windows shown in the addition's plans. The front portion of the existing façade has three windows, but the back portion behind the gap has none. The addition will be the same height as the back portion of the building, which is about three feet lower than the roof line on the front portion.

PLANNING BOARD COMMENTS

The Planning Board supports this small infill addition and the change of use of the second floor to a health club. The shadows from this small addition are minimal, and the Petitioner has agreed to contribute to improvements at the Devotion School playground. A health club would be a positive, vibrant use for the space, especially considering the unit's size and second floor location. The traffic study submitted by the Petitioner concludes that the traffic impacts are mitigated because the health club has different peak hours from several of the surrounding retail uses, and the health club is willing to subsidize employee MBTA passes to encourage public transit use. The Board expects there will be minimal conflict with Devotion School, and many of the concerns from parents about the drop-off and pick-up process at the school can be alleviated if the issue is brought to the Transportation Board's attention and specific traffic and parking measures are implemented. A health club at this location will not worsen the situation, and will add to the vibrancy of the central business district.

Therefore, the Planning Board recommends approval (5-2) of the requested relief per plans drawn by PCA, and dated 4/12/10, subject to the following conditions:

- 1. Prior to issuance of a building permit, final plans and elevations of the building and addition, including floor plans and details regarding rooftop equipment location, shall be submitted to the Assistant Director for Regulatory Planning for review and approval.**
- 2. The health club management shall implement a subsidized employee T-pass program, and evidence of the implementation of such a program shall be submitted to the Assistant Director for Regulatory Planning prior to the issuance of a Certificate of Occupancy.**
- 3. Prior to obtaining a Certificate of Occupancy, the Petitioner shall make a contribution in the amount of \$2,500 [or whatever amount the Board of Appeals determines to be commensurate with the relief required] to the Devotion School for improvements to its playground, such as landscaping.**

4. **Prior to obtaining a building permit, the Petitioner shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) final elevations and floor plans stamped and signed by a registered architect or land surveyor, and 2) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.**

Ms. Curtis also noted that the words "land surveyor" should be deleted.

The Board then recognized Mr. Michael Shepard, Building Commissioner, on behalf of the Building Department. Mr. Shepard noted that the Petitioner approached the Building Department with this proposal at the beginning of the year. He also noted that the Special Permit requirements are well founded and that they were minimally concerned about safety to the public when the infill is constructed. Mr. Shepard respectfully suggested that if the Board finds favorably on this application that the first condition be amended to include that the bricks be woven, that the location of the HVAC units and utilities be approved by the Building Department beforehand and that if they are found to be offensive, the department could require screening. Ms. Starr asked Mr. Shepard about the necessity for a construction management plan. Mr. Shepard responded that he did not expect there to be a need for it and felt, recognizing the opposition's concern that it is not the right thing for the right place, that construction would not last long and that the Building Department is supportive of granting the requested relief.

Ms. Starr asked that it be noted for the record that she takes Pilates classes at Bodyscapes and has used the Healthworks facility in Chestnut Hill from time to time but she did not feel that would in any way prejudice her or that it was necessary to recuse herself. There were no objections noted.

Mr. De Vries asked Mr. Shepard if the number of additional parking space waivers required should be rounded down or up, and whether the correct number of spaces was 3 or 4. Mr. Shepard indicated that in this case it would be rounded down. Mr. De Vries also asked the Petitioner when it was anticipated that construction would take place. Mr. Lilienthal responded that they hoped to do the construction during the summer when school is not in session.

The Board then commenced deliberations.

Chair Starr noted that parking was difficult in this area, but believed that the Petitioner has accurately shown the pattern for traffic and parking for health clubs. She noted that this is a women's only gym and that the most intense use is after 5:00 p.m. and would not conflict with pick-up and drop-off from the Devotion School. She noted that she believed it is an appropriate use for the neighborhood; it will be a boon to other businesses in the neighborhood and increase the pedestrian use of various other businesses in the area and believes that it does meet the Special Permit criteria under By-law Section 9.05.

Member De Vries stated that he believes that this is an appropriate use but that the Town should work on establishing a live (not 15 minute) parking drop-off area for drop off for children, but that this would not be a requirement or condition of approval but communicated to the Traffic Department. Additionally, Mr. De Vries stated, the rooftop utilities should be screened from surrounding streets if it is determined by the Director of Regulatory Planning that such screening is required to avoid unsightly view of the new rooftop utilities.

Member Book asked Ms. Curtis if the Traffic Department had been consulted and Ms. Curtis said that she was not aware of any consultation, but that Ms. Selkoe might have sent the application to the Traffic Department. Chair Starr stated that the request for parking drop-off and pick-up areas should be forwarded from the Devotion School PTO to the Traffic Department.

Member Book asked Mr. Harrington what the likely number of members would be, and Mr. Harrington stated that he believed that the current membership was approximately what they anticipated, and that the size of the space would dictate the number of members. Mr. Harrington noted that many services at 920 Commonwealth Avenue would be eliminated from the 325 Harvard location. Member Book then stated that with respect to the question about whether the parking situation, compared to Barnes & Noble, would be exacerbated, that the Petitioner's traffic study seemed to be reasonable and that early morning hours as compared to evening hours seemed to be low and it did not look like there would be much expansion over prior numbers.

Mr. Book was satisfied that the use and the requested relief meet the conditions of Zoning Section 9.05.

The Board then made its findings and decision.

FINDINGS

Section 4.07 – Table of Use # 18 – Health Club

A special permit is required for a health club in a General Business Zone. The Board finds that the proposed use will not derogate from the intent of the By-Law, will be compatible with other uses in the area and will improve the view of the building from the north. There will be no substantial detrimental effect on parking or traffic.

Section 5.06.4.b – Environmental Impact and Design Review, and Section 5.09.2.a&h – Environmental Impact and Design Review

A special permit under Environmental Impact and Design Review is required for any structure or use on a lot within 100 feet of Harvard Street or for a non-residential use in a non-residential district with more than 10,000 s.f. The Board finds that all of the standards in subparagraph of Section 5.09.2. a&h have been met and comments on the most relevant as follows:

Relation of Buildings to Environment

The surrounding buildings on Harvard Street on this side of the block are all two story buildings so that this infill project is in keeping with the character of the neighborhood. Additionally, the roof line of the infill addition will match that of the rear portion of the building and not the taller front portion, which is about three feet higher. This height difference helps break up the length of the building. The Petitioner states that the ground floor mural facing the school yard will be preserved. Shadow studies have been submitted and demonstrate that the added shadow to the Devotion School playground is minimal due to the small size of the addition. Loading and deliveries will likely be lower than a retail use.

Circulation

A traffic study (4/19/10), prepared by MDM Transportation Consultants, concludes that the proposed health club use will likely generate substantially lower trip activity than the previous book store use and will have peak generation periods outside the usual peak weekday hours. Additionally, there is ample public transportation serving Coolidge Corner, as well as public parking in Town-owned lots.

Section 5.43 — Exceptions to Yard and Setback Regulations

Section 5.70 — Rear Yard Requirements The Board finds that the infill will be constructed in the side yard, however, due to the fact that it is a second story not expanding the footprint within the existing side yard set back, which is a permitted pre-existing non-conformities, and whereas the Petitioner is offering a substantial counterbalancing amenity in the form of a \$10,000

expenditure for improvement and landscaping of the Devotion School playground in the general northerly area of the proposed use that the relief from the side yard requirement to the extent applicable to a second story infill will not pose a public detriment and is merited. It is further found that the use of the abutting T district which creates a “T” side yard requirement is not a “T” use and that this further merits the requested relief.

SETBACK	Required	Existing	Proposed	Relief
Side Yard	20’*	0’	0’	Pre-existing Nonconformity/Special Permit**
Rear Yard	17’ 10+L/10	11’	11’ Addition: 32.8’	Complies

**Although this proposed use is non-residential and a G-1.75 district, the site abuts a T district to the side, Section 5.64, Side Yards for Non-Dwelling Uses in Business or Industrial Districts applies: where the side lot line abuts an M district, the side yard requirements of the T district, 20 feet in this case, shall apply. Normally, G-1.75 districts have no side yard requirements for non-residential uses.*

*** Under Section 5.43, a special permit may be issued to waive dimensional requirements if counterbalancing amenities are provided. The Petitioner has stated his willingness to contribute \$10,000.00 to improvements and amenities at the Devotion School in the form of landscaping and playground improvements.*

The board finds that the conditions present and the amenity proposed fully justify the granting of the Special Permit which will not create a public detriment and will provide substantial public benefit.

Sections 6.02 – Table of All Off-Street Parking Requirements (Change of Use, 6.01.2)

The Board finds the additional parking required (3 spaces) is due to the additional infill space, not the change of use. The Board further finds that previous bookstore and the proposed health club have the same parking requirements per square foot: one parking space for every 600 feet, that the waiver of required parking will not substantially increase local parking and traffic demand and that the use will be substantially conducted within the existing building and allowing the infill without requiring the additional three spaces will not create a detriment in the neighborhood.

Section 6.02.1.b - Off-Street Parking Space Regulations

	Required	Existing	Proposed	Relief
Parking	3 additional	0	0	Special Permit/Variance*

*Under Section 6.02.1, the Board of Appeals may issue a **special permit** to waive an increase in the parking requirement, if the proposed use is being principally conducted in the existing structure and if operating characteristics, peak parking demand, and availability of public parking and transit warrant it. [See *Circulation* above, under Sec. 5.09.] The infill is only adding 5.6% of additional structure based upon the existing square footage of the building.

The board finds that the proposed use is likely to require less parking than a retail use, and that there is ample parking within walking distance of the location to avoid a substantial increase in traffic and parking and to avoid conflicts with the Devotion School pick-up and drop-offs. The Board further finds that peak hours for the proposed use do not conflict with the drop-off and pick-up hours for the Devotion School.

Section 8.02.2 – Alteration or Extension

A **special permit** is required to alter or enlarge a non-conforming condition. The Board finds that there will be no detriment to the public nor derogation from the intent of the By-law in granting the extension or alteration of the use and structure as requested. The Board further finds that the change of use and the expansion of the non-conforming side yard and parking are not inconsistent with the public interest and finds that the Petitioner should be granted the right to expand the side yard non-conformity and the parking non-conformity in the manner requested.

The Board, having heard all testimony, and after review of the plans submitted, and making the findings set forth above and those required under **Section 9.05**, voted unanimously, to grant special permits under **Sections 4.07**, Table of Use #18 for a Health Club; **5.06.4.b**, Special District Regulations; **5.09.2.a and h**, Design Review; **5.43**, Exception to Yard and Setback Requirements for construction of the infill as per plans submitted in a side yard of a GI.15 zone abutting a T District; **6.02.1.b.**, Waiver of three (3) parking spaces required due to the construction of the infill; and **8.02.2**, Alterations or Extension of a Pre-Existing non-conforming

use or structure to allow the proposed addition in the side yard and the change of use with the following conditions:

1. **Prior to issuance of a building permit, the petitioner shall submit to the Assistant Director for Regulatory Planning for review and approval: final plans and elevations including details regarding the weaving and painting of brickwork of the building and addition by a Registered Architect, also; floor plans; and details regarding rooftop equipment location and screening (should the Assistant Director for Regulatory Planning determine that screening is needed to mitigate unsightly views of new rooftop utilities from the surrounding streets and the Devotion School playground).**
2. **The health club management shall implement a subsidized employee T-pass program, and evidence of the implementation of such a program shall be submitted to the Assistant Director for Regulatory Planning prior to the issuance of a Certificate of Occupancy.**
3. **Prior to obtaining a Certificate of Occupancy, a fund will be established with the Parks and Recreation Department in the amount of \$10,000 to be used for improvements to the Devotion School playground, such as landscaping.**
4. **Prior to obtaining a building permit, the Petitioner shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) final elevations and floor plans 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



Enid Starr, Chairman

Filing Date: June 24, 2010

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Patrick J. Ward

Clerk, Board of Appeal

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