



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

# *Town of Brookline*

## *Massachusetts*

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Patrick J. Ward, Clerk

**TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2010-0056**

Petitioners, Jianping Zheng and Dingzhi Chen, applied to the Building Commissioner for permission to convert the existing structure at 14 Green Street into a restaurant with 140 seats. The application was denied and an appeal was taken to this Board.

On September 2, 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 and fixed September 23, 2010 at 7:30 p.m. in the Selectmen's Hearing Room, 6th floor, Town Hall, as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to the 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 September 9 and 16, 2010 in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

**LEGAL NOTICE  
TOWN OF BROOKLINE  
MASSACHUSETTS  
BOARD OF APPEAL  
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: **Jianping Zheng and Dingzhi Chen**  
Owner: **THE KABBALAH CENTRE OF NY INC**  
Location of Premises: **14 GREEN ST**  
Date of Hearing: **September 23, 2010**  
Time of Hearing: **7:30 p.m.**  
Place of Hearing: **Selectmen's Hearing Room, 6<sup>th</sup> floor**

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

1. 5.06.4.b.1); Special District Regulations; special permit required.
2. 5.09.2.a&h; Design Review, special permit required.
3. 5.43; Exceptions To Yard And Setback Regulations, special permit required.
4. 5.70; Rear Yard Requirements, variance required.
5. 6.01.2; General Regulations Applying to Required Off-Street Parking Facilities, (change or extension of use), variance required.
6. 6.02.1.b; Off-Street Parking Space Regulations, special permit required.
7. 6.04; Design of All Off -Street Parking Facilities, variance required.
8. 6.06.6; Off Street Loading Regulations, variance required.
9. 6.07; Design and Layout of Off-Street Loading Facilities, variance required.
10. 8.01; Continuance, variance required.
11. 8.02.2; Alteration or Extension; special permit required.

Of the Zoning By-Law to Conversion of existing building to restaurant use requiring BOA relief at **14 GREEN ST BRKL**

Said premise located in a G-1.75 (CC) (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/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, this Board held a public hearing. Present at the hearing was Chairman, Enid Starr and Board Members, Jonathan Book and Robert DeVries. The petitioners, were represented by Scott C. Gladstone, Attorney at Law, 1244 Boylston Street, Suite 200, Chestnut Hill, MA 02467, along with Architect Arthur Choo of Choo & Co., Inc., One Billings Road, Quincy, MA 02171, and Traffic Engineer, Robert J. Michaud, P.E., MDM Transportation Consultants, Inc., 28 Lord Road, Suite 280, Marlborough, MA 01752.

Both in his written submission and in his oral presentation, Mr. Gladstone described the factual background for the petition, the site & neighborhood and Applicant's proposal as follows:

The site currently contains a one story brick structure, with a finished basement. The building is currently owned by The Kabbalah Center, and is being used principally as office space with a small bookstore component. The locus is surrounded by Friendly's Express at 289-293 Harvard Street, Panera Bread at 299 Harvard Street and 4 Greenway Court, a four-story, eight unit brick apartment building that is part of a larger housing development on each side of Greenway Court. Prior to The Kabbalah Center acquiring the building in May, 2005, it was owned by Green Street Development Trust and was leased to The Brookline Community Center for the Arts for use, primarily, as a dance studio.

Mr. Gladstone said that his clients wish to fit out the current building to accommodate a 140-seat Hibachi-style Japanese restaurant modeled after the Applicant's successful restaurant, Osaka Japanese Sushi and Steak House, which they have run in Northampton, Massachusetts for the last 8 years. Other than replacing the unsightly chain link fence at the side of the building and putting in place a new sign (which will go through separate design review), the Applicants do not intend to make any changes to the exterior of the building.

Mr. Gladstone indicated that the restaurant use will have approximately 30 employees and will operate Monday through Thursday from 11:30 a.m. to 11 p.m., Friday and Saturday from 11:30 a.m. to midnight, and Sunday from 12:30 p.m. to 11 p.m. After meeting with neighbors, the applicants have indicated the bar will be a service-bar only, and they are willing to close the kitchen and bar at 10 p.m. Sunday through Thursday, but would keep the restaurant open till 11 p.m. to allow diners to finish their meals.

Mr. Gladstone argued that the only relief needed concerned parking, which is necessary because there is no room to provide parking on the site. Moreover, 140 seats is the minimum to justify the substantial investment needed to open a sit-down hibachi-style restaurant on this site. Mr. Gladstone argued that there is a parking credit under the applicable tables of 18 spaces for the site's current office use. The proposed use of a 140 seat restaurant requires 28 parking spots. Applying the already existing 18-spot credit, the Applicants are requesting relief for an additional 10 spots, which may be granted by special permit pursuant to §6.02.1.b.

Mr. Gladstone addressed the question of whether the current use was a religious use. If the prior use were held to be a religious or worship use, which use has no parking requirement, then the site would not have the benefit of either parking space credits or other pre-existing non-conforming status, which may be continued without further relief pursuant to §8.01. If that were the determination, then any non-religious re-use of this site (where the parking requirement is based on square footage of the building) would require a variance in order to get parking relief for all required spaces in excess of 10 (there being no more "credit" for a pre-existing lack of spaces) or any other necessary relief.

Mr. Gladstone argued that, in fact, this is not the case. The prior use by The Kabbalah Center is not a religious or worship use. Mr. Gladstone presented a letter from The Kabbalah Center

explaining that it used this site primarily as an office, with a secondary use as a book store and categorically stating that “Kabbalah is not a religion.” Kabbalah as promulgated by The Kabbalah Center is more akin to a philosophy. The Kabbalah Center’s position is supported by the fact that the Assessor’s office taxes this site as an office use and The Kabbalah Center has never applied for tax-free status as a religious use.

Mr. Gladstone cited case law stating that, in order to maintain the separation of church and state described in the Declaration of Rights in the Massachusetts Constitution and in the First Amendment of the United States Constitution, The Kabbalah Center must be allowed to dictate for itself whether it considers its use to be religious. It is not permissible for the Town to impose a religious label on an entity who has not embraced it itself (and, thereby, taking advantage of the leniencies and tax breaks given to religious uses). *See e.g., Martin v. Corporation of Presiding Bishop of Church of Jesus Christ of Latter Day Saints*, 434 Mass. 141, 152 (2001) and *Needham Pastoral Counseling Center, Inc. v. Bd. Of Appeals of Needham*, 29 Mass.App.Ct., 31, 36 (1990).

Mr. Gladstone went on to discuss the standards for relief under §6.02.1.b in the context of his discussion of the special permit standards under §9.05:

a. The site is an appropriate location for such a use, structure, or condition: A restaurant of this size is an allowed use without a special permit in the G1.75 Coolidge Corner District. It is behind and next to 6 restaurants on the SAME BLOCK, including one restaurant that holds a similar geographical position on Babcock Street (i.e., one building off of Harvard Street onto a residential side-street) and a counter-service restaurant on Harvard Street with 159 seats (Panera). There is a buffer of a wide alley way between the site and the abutting residential apartment building, which apartment building already backs up to the other restaurants that front onto Harvard Street. The apartment building uses its portion of this buffer for tenant parking. Another commercial building, the back of Pete’s coffee that fronts onto Harvard St. (#285), is directly across Green Street from the site.

b. For the reasons set forth above, the use as developed will not adversely affect the neighborhood. In addition, the added tax benefit of a restaurant, which necessarily includes the local option meal tax in addition to the commercial rate real estate taxes, would be a tremendous benefit to the Town.

c. There will be no nuisance or serious hazard to vehicles or pedestrians. Besides metered spots on the street that already service patrons of the other stores and restaurants that front Harvard Street, the site is within easy walking distance of the 66 bus line, the C train on the green line and all of Coolidge Corner's public parking lots. Finally, unlike a Chinese restaurant that bases much of its business on take-out (with its high volume turn-over), the proposed family style hibachi restaurant is designed for longer term dining, thus leading to much less frequent customer turn-over. A traffic study performed by MDM Transportation demonstrated that there was more than enough public parking available during the relevant time periods and the affects on traffic on Green Street will be negligible. Employees (likely 20 in any one shift) will be brought in by shuttle service or be given T passes so as to avoid having employees taking up public parking spaces. This site enjoys a usable swing space in the back so that trucks can get in and out of the site easily, without affecting traffic on Green Street.

d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use. This will be a first class family restaurant, one of the owner's of which and the manager of which lives a block away. The Applicants are experienced restaurateurs having run a successful Japanese hibachi style restaurant in Northampton for the last 8 years. Garbage handling and deliveries will be handled appropriately so as to have the least impact possible on residential neighbors. Deliveries will be made by van or small trucks parked in the rear swing space.

e. The development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people as this is a commercial project.

Finally, Mr. Gladstone argued that, if a variance was necessary, this project met all of the requirements for a variance. Just as was the case with 299 Harvard Street (Panera) which was given zoning relief to expand without the ability to install any parking, the Applicants cannot install any parking on this site due to its unique shape and position and the manner in which the building is positioned on the site. The site is unique in the district as it does not share party walls like many of the other restaurants, but it still lacks space to provide additional parking spaces. Without the sought after relief, it would not be economically viable for the applicants to make this purchase and open an economically viable restaurant. *See Marashalian v. Zoning Board of Appeals of Newburyport*, 421 Mass. 719, 726 (1996)(rejecting the proposition that a variance is unwarranted if any other possible use can be made of a site). For the reasons set forth as part of the Special Permit

review, the addition of this type of restaurant will be a benefit to the public, hence not detrimental. Given that this is an allowed use and such parking and loading relief is routinely given on this and similar blocks in Coolidge Corner, the relief being sought would certainly not substantially derogate the intent or purpose of the Zoning By-Law.

The Board considered submitted emails both in favor of the proposal and some with reservations about the proposal. The Chairperson inquired if any members of the public wished to be heard. The Board heard from Christine Leighton and another neighbor, both of 21 Green Street who expressed concerns over the noise and odors from the proposed restaurant, citing similar problems with the restaurants already in the area. Richard Strauss of 51 John Street echoed the concerns of Ms. Leighton and expressed his concern over increased traffic on his street. The Board heard from two members of the public in support of the proposal, including Lea Cohen, President of the Brookline Chamber of Commerce.

Courtney Synowiec, Planner, delivered the comments of the Planning Board:

April 10, 1998, BOA case #3436 – The Planning Board recommended denial, and the Board of Appeals approved, a proposal to convert 14 Green Street, used then as an office building, into an 80-seat restaurant. That decision was attached. Mr. Gladstone observed that the proposed restaurant from 1998 is now the Taam China on Harvard Street and that it only needed 80 seats because it is largely dependent on take-away orders. The proposed hibachi style restaurant will be wholly dependent on in-restaurant sit-down dining.

Section 5.06.4.b.1 – Special District Regulations: All applications in the G-1.75 (CC) District shall be subject to *Section 5.09, Design Review*.

Section 5.09.2.a & .h – Design Review: Uses on a lot in G-1.75 (CC), or non-residential uses in a non-residential district with more than 10,000 s.f. of gross floor area or with 20 or more parking spaces, require a special permit for design review. The applicant has submitted a statement reviewing the community and environmental impact and design standards relative to this proposal. Those most applicable are as follows:

*Circulation:* There are two tandem parking spaces at the rear of the building next to where the dumpster will be located. The applicant is proposing to use these spaces for vehicles that are emptying the dumpster as well as for delivery vehicles, whose drivers will then use handcarts to move product either through the rear door or to the basement stairs in front of the building. The applicant is proposing to offer a free monthly T pass program to employees to encourage public

transportation use. Since there is no parking for customers on site, the applicant has indicated a willingness to establish valet parking.

*Utility Service:* The applicant is proposing locating the dumpster in the far rear corner of the lot, which is screened by the buildings that front on Harvard Street.

*Advertising Features:* The applicant will proceed with a sign application and the sign/façade review process by the Planning Board following the Board of Appeals process.

*Special Features:* The rear of the building will be used for unloading of supplies and trash storage. The applicant has indicated the dumpster will be discreetly screened, but specific plans indicating such have not yet been submitted. The applicant has indicated that the side of the building, and therefore the shared easement, will be kept clear.

**Section 5.43 – Exceptions to Yard and Setback Regulations**

**Section 5.70 – Rear Yard Requirements:** This building has a pre-existing non-conforming rear yard setback of approximately 12 feet.

**Section 6.01.2 – General Regulations Applying to Required Off-Street Parking Facilities (change or extension of use):** Whenever there is a change of a use that increases the parking requirements by 15 percent or more, the total additional parking requirements for the change shall be provided in accordance with the requirements of that section.

**Section 6.02.1.b – Off-Street Parking Space Regulations:** When a change of a non-residential use in a business district is proposed primarily within an existing building, the Board of Appeals may by special permit waive up to 10 parking spaces, or up to 50 percent of any increased requirement, whichever is greater. In determining if a waiver of the parking is appropriate, the Board of Appeals shall consider information provided by the applicant regarding the following items:

- The operating characteristics of the proposed use, including but not limited to a description of the type of business, hours of operation, number of employees, and delivery service requirements;
- The peak parking demand for the proposed use in relation to the peak parking demand generated by other uses in the area;
- The need for and provision of employee parking; and
- The availability and/or shortage of existing public parking and transit facilities in the area.

Since the Building Commissioner has determined that this building is currently used for religious purposes, the property currently complies with parking requirements; the Zoning By-law does not require parking for religious uses.

The applicant is arguing that the property is not used for a religious purpose, and instead should be classified as an office and bookstore use. The parking requirement for office and retail uses is 1 space for every 350 s.f. on the ground floor, and 1 space for every 600 s.f. on other floors. **Please see table and asterisks below for additional discussion of parking requirements.**

**Section 6.04 – Design of All Off-Street Parking Facilities:** The two tandem parking spaces on site, located behind the building, do not meet the design standards under this section.

**Section 6.06.6 – Off-Street Loading Regulations:** A restaurant use with square footage between 2,000 s.f. and 15,000 s.f. requires 1 loading dock. This building does not have a loading dock.

**Section 6.07 – Design and Layout of Off-Street Loading Facilities:** Since this building does not have a loading dock, nor is the applicant intending to provide for a loading dock, the proposal does not comply with this section. The applicant is proposing to have delivery vehicles park behind the building and deliveries be carted into the building either through the rear entrance or around the front of the building to the side basement stairs and entrance.

**Section 8.01 – Continuance:** Any nonconforming building, structure or use which lawfully existed at the time of passage of the applicable provision of this By-law, or any amendment thereto, may be continued or may be changed to conforming, however once it is changed to be conforming, it shall not be made nonconforming again. Since this building has been used as a religious use, it conforms with the parking requirements of the By-law. Seeking to make the structure non-conforming again would be in violation of this section. *Variance required.*

**Section 8.02.2 – Alteration or Extension:** A special permit is required to alter or extend this non-conforming structure.

	Required	Existing	Proposed	Finding
<b>Parking Spaces</b>	28 spaces (1 space for every 5 seats)	2 tandem	2 tandem	Variance*
<b>Loading Docks</b>	1 loading bay (1 loading bay for restaurants with 2,000- 15,000 s.f.)	0 bays	0 bays	Pre-existing, non- conforming**

\*This property is currently being used as a religious use, as determined by the Building Commissioner. As such, the use requires no parking, and the structure is conforming with respect to vehicular use. Therefore, the proposal requires a full 28 parking spaces, and a variance is required.

The applicant has submitted an argument that the current use is not a religious use, and is instead an office/bookstore. That use has the following parking requirements: 1 space for every 350 s.f. at the ground floor, and 1 space for every 600 s.f. on other floors. The building has 4,026 gross s.f. on the ground floor, and 4,042 gross s.f. in the basement, requiring 18 spaces as a retail or office use. The applicant is arguing that 18 spaces should be "credited" to this building under *Section 6.01*, and the applicant is seeking relief for 8-10 additional spaces, for which a special permit is available under *Section 6.02.1.b* for changes of a non-residential use in a business district within an existing building. Please see the discussion of *Section 6.02.1.b* above for a review of the evidence the Board of Appeals may consider when determining if a waiver is appropriate.

\*\*Loading bays are required by the Zoning By-law for both religious and restaurant uses.

Ms. Synowiec reported that, at its September 16, 2010 meeting, the Planning Board was unanimous in its support of this proposal because a restaurant is an appropriate use for a commercially-zoned district. Several commercial buildings in Coolidge Corner, including other restaurants, do not have parking, and a lack of parking at this property should not unreasonably

hamper its use. A restaurant at this location would contribute to the vibrancy of the Coolidge Corner commercial district. The Board was somewhat concerned about the proposed number of seats for the restaurant, and felt that only a hibachi-style restaurant, with its unique consolidated seating arrangement, would safely and appropriately accommodate 140 seats. A restaurant with a typical seating arrangement, requiring more aisle space, would not be able to fit the same number of seats in this building, and a condition limiting the 140 seats to hibachi-style restaurants would be appropriate. Additionally, conditions regarding deliveries, parking and trash storage would ensure the restaurant is operated in a manner suitable for a building that immediately abuts a residential building and district. Neighbors understandably have concerns regarding traffic, odors, and rodents, but these concerns can largely be addressed with well-designed conditions. Therefore, the Planning Board recommends approval of the proposal, the plot plan prepared by Boston Survey and dated 9/3/2010, and the plans prepared by Arthur Choo and received by the Planning Department on 8/10/2010, subject to the following conditions:

1. The applicant shall provide fully subsidized MBTA passes to its employees to encourage the use of public transit, and evidence of the existence of such a program and its details, including how its advertised to employees and the number of participating employees, shall be submitted to the Assistant Director for Regulatory Planning for review and approval prior to issuance of a certificate of occupancy.
2. Deliveries for the restaurant shall only take place by vans, small trucks or small vehicles, and occur only between the hours of 10 a.m. and 6 p.m. Delivery vehicles shall not park on the sidewalk, double park, or otherwise block pedestrian or vehicular traffic.
3. Signage indicating that delivery vehicles shall park in the rear of the building and not block either the passageway or double park in front of the building shall be approved by the Assistant Director for Regulatory Planning and posted prior to the issuance of a certificate of occupancy.
4. The restaurant shall have no more than 140 seats, and any other seating arrangement than that proposed by a hibachi restaurant, shall be reviewed and approved by the Fire and Building Departments prior to issuance of a certificate of occupancy.

5. There shall not be a valet service for this restaurant without seeking a modification of this decision by the Board of Appeals.
6. All refuse shall be stored securely in a rodent proof container(s). Any outdoor refuse container(s) shall be attractively maintained and screened from view, subject to the review and approval of the Assistant Director for Regulatory Planning prior to the issuance of a certificate of occupancy.
7. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final surveyed site plan, indicating parking spaces and dimensions and trash storage locations, stamped and signed by a registered land surveyor or engineer; 2) a final floor plan, indicating the total number of seats, gross floor area, and maximum occupancy, stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chair then called upon Michael Shepard, Building Commissioner, to deliver the comments of the Building Department. Mr. Shepard expressed his belief that the Kabbalah Center is a religious use, liking it to a Christian Science Reading Room and that a variance would be needed in order to accommodate a waiver of 28 required parking spaces. He stated that he had visited another similar restaurant operated by the same family in Northampton and in his opinion it is everything that the applicant says it is and he would expect that a Brookline site of the same restaurant would be operated equally as well. The Building Commissioner assured the Board that should they approve the requested relief, the requirements of the State Building Code would be satisfied. Mr. Shepard said that in his opinion, the Planning Board overstepped its authority limiting the requested number of seats to hibachi style restaurants only. He said that seating capacity is a function of the Building, Fire and Health codes irrespective of style. He opined that permits would only be issued for this or any future restaurant that met capacity requirements.

The Board began its deliberations by addressing the issue of whether or not The Kabbalah Centre's use of the property was a pre-existing religious use. After extensive discussions and reliance on Massachusetts decisional law, the Board determined that the use of the property was not

a pre-existing religious use. The fact that the Kabbalah Centre itself did not consider it's use as religious (and did not take advantage of property tax exemptions for religious use of the property), was a compelling argument that there was not a pre-existing religious use at the site.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits and that the petitioner has satisfied the requirements necessary for relief under Sections 5.09, 6.02.1.b, 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 site is an appropriate location for such a use, structure, or condition: A restaurant of this size is an allowed use without a special permit in the G1.75 Coolidge Corner District. It is behind and next to 6 restaurants on the same block, including one restaurant that holds a similar geographical position on Babcock Street (i.e., one building off of Harvard Street onto a residential side-street) and a counter-service restaurant on Harvard Street with 159 seats (Panera). There is a buffer of a wide alley way between the site and the abutting residential apartment building, which apartment building already backs up to the other restaurants that front onto Harvard Street. The apartment building uses its portion of this buffer for tenant parking. Another commercial building, the back of Pete's coffee that fronts onto Harvard St. (#285), is directly across Green Street from the site.
- b. For the reasons set forth above, the use as developed will not adversely affect the neighborhood. In addition, the added tax benefit of a restaurant, which necessarily includes the local option meal tax in addition to the commercial rate real estate taxes, would be a tremendous benefit to the Town.
- 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 of housing available for low and moderate income people.

Accordingly, the Board determined that the only relief necessary was a special permit to dispense with the parking requirements for ten (10) parking spaces associated with the proposed change of use from an office use to a 140-seat restaurant and voted unanimously to grant that

special permit pursuant to §6.02.1.b of the Zoning by-Law. In the alternative, the Board determined that, even if the prior use was a religious use, the applicant had satisfied the requirements for a variance under G.L. c. 40A, §10 and voted unanimously to grant that variance. Specifically, the Board finds that the literal compliance with the requirements of the By-Law is not feasible in light of the existing conditions at the lot in question. As a result of the lot conditions and the unique shape of the existing building, failure to grant the requested variances would cause substantial hardship to the property owner/applicant. Granting the requested variance to dispense with twenty-eight (28) parking spaces associated with the change of use from a religious use to a 140-seat restaurant at this site will not be detrimental to the public good nor nullify or substantially derogate from the intent or purpose of the Brookline Zoning By-Law. The foregoing grants represent all the zoning relief requested to change the use to a 140-seat restaurant per the plans, and are granted subject to the following conditions:

1. The applicant shall provide fully subsidized MBTA passes to its employees to encourage the use of public transit and/or provide shuttle service to the restaurant site, and evidence of the existence of such a program and its details, including how it is advertised to employees and the number of participating employees, shall be submitted to the Assistant Director for Regulatory Planning for review and approval prior to issuance of a certificate of occupancy.
2. Deliveries for the restaurant shall only take place by vans, small trucks or small vehicles, and shall occur only between the hours of 10 a.m. and 6 p.m. Delivery vehicles shall not park on the sidewalk, double park, or otherwise block pedestrian or vehicular traffic.
3. Signage indicating that delivery vehicles shall park in the rear of the building and not block either the passageway or double park in front of the building shall be approved by the Assistant Director for Regulatory Planning and posted prior to the issuance of a certificate of occupancy.
4. There shall not be a valet service for this restaurant without seeking a modification of this decision by the Board of Appeals.
5. All refuse shall be stored securely in a rodent proof container(s). Any outdoor refuse container(s) shall be attractively maintained and screened from view, subject to the

review and approval of the Assistant Director for Regulatory Planning prior to the issuance of a certificate of occupancy.

6. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final surveyed site plan, indicating parking spaces and dimensions and trash storage locations, stamped and signed by a registered land surveyor or engineer; 2) a final floor plan, indicating the total number of seats, gross floor area, and maximum restaurant occupancy, stamped and signed by a registered architect; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of the  
Board of Appeals

  
Enid Starr, Chairman

RECEIVED  
TOWN OF BROOKLINE  
TOWN CLERK

A 8:21

Filing Date: October 4, 2010

1A True Copy

ATTEST:



Patrick J. Ward  
Clerk, Board of Appeals