



# *Town of Brookline*

## *Massachusetts*

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

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

TOWN OF BROOKLINE  
BOARD OF APPEALS  
CASE NO. 2010-0063

Petitioners, James and Lewis Zafferes, applied to the Building Commissioner for permission to change the use of their property at 1784 Beacon Street from a nail salon to a restaurant. The application was denied and an appeal was taken to this Board.

On April 7, 2011, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed May 12, 2011 at 7:15 p.m. in the Selectmen's Hearing Room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to his 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 April 21 and 28, 2011, in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

### NOTICE OF HEARING

**Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:**

Petitioner: **ZAFFERES JAMES & LEWIS**  
Owner: **ZAFFERES JAMES & LEWIS**  
Location of Premises: **1784 BEACON ST**  
Date of Hearing: **May 12, 2011**  
Time of Hearing: **7:15 p.m.**  
Place of Hearing: **Selectmen's Hearing Room, 6th. floor**

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

1. **4.07, Use # 30; Table of Use Regulations, variance required.**
2. **5.09.2.a; Design Review, special permit required.**
3. **8.02.1.a&2; Alteration or Extension, special permit required.**
4. **8.05; Substitution, special permit required.**
5. **Modification of BOA#2958 as required.**

Of the Zoning By-Law to: **Change of use requiring Board of Appeals Relief at 1784 BEACON ST.**

Said premise located in a **M-2.0 (multi-family)** residence 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, Lisa Serafin and Mark Zuroff. Chris Ntasios, potential new restaurant operator and owner of the Aegean restaurants of Framingham and Watertown, presented the case before the Board. He was accompanied by the owners, James

and Lewis Zafferres as well as the project Architect, Lucio Trabucco of Nunes Trabucco Architects, 315 Chestnut Street, Needham, MA 02492. Also in attendance was Alfred Muccini of MEA Engineering, 20 Felton Street, Waltham MA 02453 and Lawrence Copley of L.G. Copley Associates, 53 Barrett Street, P.O. Box 920479, Needham, MA 02492.

The Planning Board report dated 28 April 2011 provided some background history related to the site.

June 6, 1989, BOA case #2958 – The Board of Appeals granted relief to allow the applicant to substitute one non-conforming use, a hair salon, for the prior non-conforming use, a pharmacy, located at 1786 Beacon Street, which is the neighboring commercial unit on the same lot as 1784 Beacon Street.

May 11, 1955, BOA case #781 – The Board of Appeals granted relief to allow the applicant to construct a rear extension to the building at 1784-1786 Beacon Street, used then for a grocery store and drug store, both non-conforming uses.

November 4, 2010 – The Planning Board met to review the proposed plans for the new restaurant. The case was continued to allow for the applicant to address concerns.

January 20, 2011 – The Planning Board met to review revised and more detailed plans for the new restaurant. The Board indicated it still had some concerns regarding possible noise impacts from HVAC units, and the case was continued to allow the applicant to consult with an acoustical engineer as well as to address the concerns of neighbors.

Mr. Ntasios said that he wishes to modify and use the storefront previously occupied by a nail salon for a restaurant. The existing recessed storefront would be modified and brought forward so that it is flush across the front of the building. The entrance would be moved and a new curved wall detail would project from the front façade. A new metal canopy would replace the existing canopy over both storefronts. A planter 4 feet high would be installed between the two storefronts to create a more defined separation.

Mr. Ntasios said that the wood shed structure at the rear of the building would be removed and garbage barrels would be stored within a new trash room inside the building. Mr. Ntasios said that he has extensive experience in the restaurant industry and that the combination of

storing trash inside the building as well as implementing a weekly extermination plan should keep the rodent population under control. All other needed alterations would be inside the building, both on the ground floor and in the basement, and would enable the space to be used as a restaurant. The restaurant will have 16 to 18 seats, and does not require any parking relief.

Alfred Muccini, of MEA Engineering provided plans indicating the proposed locations for the kitchen exhaust system and HVAC units. The kitchen exhaust would be vented through an existing masonry chimney that extends along the exterior wall and above the roof of an abutting residential building. Mr. Muccini said that he expects this will avoid any possible odors or noise impacts from the kitchen's exhaust on neighboring residents. Additionally, the restaurant's air conditioning and heating unit will be located inside the building rather than on the building's roof. He said that they are proposing to replace the existing roof-top condenser with a new air cooled condenser, as well as install a new gas make-up air heater for the kitchen hood on the building's roof at the rear of the building. The other existing A/C units on the roof would be retained.

Mr. Copley, the acoustical engineer, indicated that the locations of the ventilation and HVAC units atop the roof should pose no problems for the neighbors. He said that the proposed equipment is state of the art and would meet the requirements of the Town of Brookline Noise By-Law.

The Chairman asked whether anyone in attendance wished to speak in support of the proposal. No one rose to speak.

Several nearby residents related concerns regarding noise and odor and pest control. In response to pest control concerns the petitioner submitted Exhibits 1 and 2 related to pest control

in the food service business and this location in particular. Board Member Serafin asked about removal of trash and the petitioner responded that removal will be by private vendor.

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

**Section 4.07, Use #30 – Table of Use Regulations:** Eating places with less than 5,000 s.f. are not allowed in M districts.

**Section 5.09.2.a – 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 proposed changes to the storefront's façade are designed to improve the building's appearance and are not expected to negatively affect the streetscape. The property has a wide sidewalk, and altering the entrance and installing a planter as shown is not expected to be a detriment to the pedestrian environment.

*Circulation:* The property currently has no parking on site, but the proposed restaurant has a limited number of seats and does not require any parking relief. The applicant has indicated a willingness to restrict deliveries to the restaurant to the front of the building and by van to ensure the rear alleyway remains clear in response to concerns from the neighbors.

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

**Section 8.02.1.a & 2 – Alteration or Extension:** Any alteration of a nonconforming use, as well as any alteration to a nonconforming structure, shall require a special permit from the Board of Appeals. *Special permit required.*

**Section 8.05 – Substitution:** The Board of Appeals may by special permit allow a nonconforming use to be by another use, provided that the substituted use is permitted in the same districts in which the prior nonconforming use is permitted, and provided that the new use will be less objectionable in terms of noise, traffic, or other characteristics than the prior use. *Special permit required.*

**Modification of BOA case #2958:** This previous Board of Appeals case allowed for the substitution of a hair salon for a pharmacy at 1786 Beacon Street, which is at the same property. A modification to this case may be necessary to allow for another substitution at 1784 Beacon Street.

Ms. Sosnowiec reported that the Planning Board was supportive of this application to substitute a new restaurant in the commercial space previously used by a nail salon. Although the property is located in a residential district, the building has provided space for commercial tenants for several decades. The petitioner has taken great care to ensure the neighboring

residents will not be detrimentally impacted by the restaurant use by working extensively with a mechanical and acoustical engineer to locate the rooftop ventilation and HVAC equipment so the neighboring residential properties will not be subjected to food odors or mechanical noise. The petitioner has also worked with Waltham Pest Control and has presented evidence they will manage pest control with weekly and monthly exterminations on their property, so as not to exacerbate the pre-existing rodent problem that is regional to this neighborhood. The petitioner has taken care to ensure trash is appropriately stored within the building and has agreed to demolish a substandard garbage shed on the rear of the property. Finally, the applicant has agreed to have all restaurant deliveries by van and by way of the building's Beacon Street entrance to keep the rear alleyway clear. She said that the Planning Board felt the applicant had worked diligently to address the zoning concerns of their neighbors and the Planning Board to ensure the restaurant use would not be more objectionable in terms of noise, traffic or other detrimental impacts than the previous nail salon. Therefore, the Planning Board recommended approval of the proposal and the submitted plans by Nunes Trabucco Architects, dated 11/19/10, and the plans by Mea Engineering Associates dated 3/4/11, subject to the following conditions:

1. Prior to the issuance of a building permit, final building elevations and utility plans, indicating all rooftop units, 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 inside the building in rodent proof containers, and the wooden structure on the rear of the building shall be removed. A weekly rodent extermination plan shall be implemented and maintained while the restaurant is in operation.

4. The building shall be appropriately fitted with an odor control system to ensure neighboring residences are not negatively affected by food preparation odors, and installed in accordance with the plans dated 3/4/11, subject to the review and approval of the Building Commissioner. All filters shall be appropriately maintained and replaced as needed.
5. Prior to issuance of a certificate of occupancy, an acoustical 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.
6. Deliveries for the restaurant shall only take place by vans, small trucks or small vehicles, and only be made through the building's Beacon Street entrance.
7. 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 Chairman then called upon Michael Shepard, Building Commissioner, for the report from the Building Department. Mr. Shepard stated that the Building Department was supportive of the proposed change in use for the property. Although non-conforming, the substitution section of the Zoning By-Law provides for such changes. He noted that the petitioner had worked very hard to address significant neighborhood concern regarding noise, odor, pests and traffic and snow removal. Mr. Shepard said he was in attendance at two Planning Board hearings and the small amount of neighbor input during Board of Appeals hearing is, in his opinion, testimony to the hard work and resolve of the petitioner.

Board Member Zuroff inquired about the possibility of outside seating, and the petitioner responded that there were no plans to provide outside seating at this time. Mr. Zuroff inquired whether the old pharmacy at this location had a fountain and the owner responded that it did. The Chairman inquired about food preparation and Mr. Ntasios responded that most of the food preparation would take place at one of his other restaurants and be delivered to 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 Section 5.09, 8.02.1.a & 2, and 8.05 and modified Board of Appeals Case #2958 accordingly. The Board also made the following specific findings pursuant to Section 9.05 of the Zoning By-Law:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

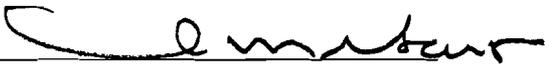
Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

- 1. Prior to the issuance of a building permit, final building elevations and utility plans, indicating all rooftop units, 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 inside the building in rodent proof containers, and the wooden structure on the rear of the building shall be removed. A weekly rodent extermination plan shall be implemented and maintained while the restaurant is in operation.**
- 4. The building shall be appropriately fitted with an odor control system to ensure neighboring residences are not negatively affected by food preparation odors, and installed in accordance with the plans dated 3/4/11, subject to the review and approval of the Building Commissioner. All filters shall be appropriately maintained and replaced as needed.**
- 5. Prior to issuance of a certificate of occupancy, an acoustical 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.

6. Deliveries for the restaurant shall only take place by vans, small trucks or small vehicles, and only be made through the building's Beacon Street entrance.
7. 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.

RECEIVED  
TOWN OF BROOKFIELD  
TOWN CLERK  
JUN 30 2011  
11:33:27  
Unanimous Decision of  
The Board of Appeals  
Filing Date: June 30, 2011

  
Enid Starr, Chairman

A True Copy  
ATTEST:

  
Patrick J. Ward  
Clerk, Board of Appeals