



Town of Brookline

Massachusetts

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

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Patrick J. Ward, Clerk

**TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 090037**

Petitioner, Clifton Helman, applied to the Building Commissioner for permission to remodel the existing premises at 876 Commonwealth Avenue into a restaurant with seating for not more than sixty-one (61) persons. The application was denied and an appeal was taken to this Board.

On June 11, 2009, 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 July 23, 2009, at 7:45 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 July 2, 2009 and July 9, 2009 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:

Petitioners: **CLIFTON HELMAN**

Location of Premises: **876 COMMONWEALTH AVE BRKL**

Date of Hearing: **07/23/2009**

Time of Hearing: **7:45 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:

6.02.1; Table of Off-Street Parking Space Requirements, 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 remodel the existing premises at 876 Commonwealth Avenue into a restaurant with seating for not more than 61

at **876 COMMONWEALTH AVE BRKL.**

Said Premises located in a **G-2.0** (General Business) district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/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, Jesse Geller, and Board Members, Jonathan Book and Rob DeVries. Attorney Roger R. Lipson of 7 Harvard Street, Ste. 220, Brookline, MA 02445

presented the case on the behalf of the owner, before the Board. Attorney Lipson waived the reading of the notice of hearing.

Attorney Lipson reviewed the permits recently issued to the subject address. On March 12, 2001, the Planning Board approved sign and façade improvements for Tweeter, Inc. to expand into the rightmost four of the five storefront bays at 874-880 Commonwealth Avenue. This included approval of a new façade sign, glass window panels and a handicap ramp. On June 5, 2002, the Planning Board approved an application by Starbucks coffee shop to remove landscaping and install an outdoor seating area, surrounded by a wrought iron fence. In July, 2007 - April, 2008, the Planning Board reviewed and approved modifications to the building's façade, including new signage for Citibank, a modification in the storefront transom windows, and a new stair and extended ramp for the new central storefront entrance.

Attorney Lipson described 876 Commonwealth Avenue as the middle storefront in a three-unit commercial building along Commonwealth Avenue near the intersection of Commonwealth Avenue and Amory Street. A private alleyway exists between the subject property and the neighboring building at 888 Commonwealth Avenue. The building has a cast stone façade featuring classical piers and cast stone urns on the parapet. This storefront was previously part of the right-most storefront (now occupied by Citibank) and used as retail space for Tweeter.

Attorney Lipson said that the applicant, Clifton Helman, would like to convert the formerly retail space, approximately 2,697 s.f., into a restaurant operated by Chipotle Mexican Grill with 61 seats. He said that the applicant would remove an existing landscaping bed in front of the storefront, install a concrete pad, and use the area for seasonal outdoor seating. The number of seats would remain at 61 at all times; the applicant would remove bar

area seats when the patio area is in use.

In regard to the Off-Street Parking Space Regulations, Attorney Lipson stated that the recent amendment to **Section 6.02.1.b** of the Zoning By-Law approved at the May, 2009 Town Meeting would allow the Board of Appeals to waive up to 10 spaces or up to 50 percent of any increased requirement. Based upon his client's application, Attorney Lipson stated that the conditions set forth in **Section 6.02.1.b** of the Zoning By-Law were met. He pointed out that the restaurant is in the middle of the Boston University campus and that most of the customers would probably be students and that many of the 25 part-time employees would also probably be students. More importantly, he noted that the Commonwealth Avenue Green Line runs by the restaurant's front door making accessibility by public transportation a major factor in alleviating parking requirements.

Attorney Lipson informed the Board that the applicant intends to revise all of the current storefronts so that all transom windows are consistently sized and will match the existing recent changes to the adjoining storefronts to assure uniformity.

Attorney Lipson stated that he objected to the Planning Board's proposed condition requiring subsidizing at least 50 percent of the cost of monthly subway and bus T-passes for all of the restaurant's employees. He said that some of the part-time employees would probably be students who reside in nearby dormitories and apartments and suggested that the condition be amended to apply only to those employees residing beyond a one-mile radius from the restaurant.

The Chairman asked if any of the other Board Members had any questions.

Board Member DeVries asked whether the area immediately in front of the building was in Brookline or Boston. Attorney Lipson responded that the area from in front of the building to

the sidewalk was in Brookline. Mr. DeVries asked whether any outside seating was planned and Attorney Lipson responded that the current landscaped area was being removed to facilitate outside seating and that the applicant intended to apply for 10 outside seats.

Attorney Lipson then distributed copies of the applicant’s design plans for the façade improvements, signage, transoms, landscaping and patio seating plans. The plans were marked as Exhibit A and made a part of the hearing record.

The Chairman asked whether anyone in attendance wanted to speak in favor or against the application for relief. No one spoke in favor or against the petition.

Lara Curtis, Senior Planner, delivered the findings of the Planning Board.

Section 6.02, Paragraph 1, Table of Off-Street Parking Space Requirements

Section 6.02.1.b – Off-Street Parking Space Regulations: In May 2009, Town Meeting approved an amendment to this section regarding changes of use in business districts within existing buildings: “When a change or expansion of a non-residential use in a business district is proposed primarily or entirely within an existing building, the Board of Appeals by special permit may waive up to 10 spaces, or up to 50 percent, of any increased requirement, whichever is greater.” If the Attorney General does not approve this amendment, this section would revert to its previous language.

	Required	Existing	Proposed	Relief
Parking Spaces (1 space per 5 seats)	5*	0	0	Special Permit**

*The parking calculations are as follows: as a pre-existing retail space of 2,697 s.f., the storefront is already credited as having 7.7 parking spaces (1 space for every 350 s.f.), although there is no parking on site. A 61-seat restaurant requires 12.2 spaces, therefore, the applicant is required to provide the difference of 4.5 spaces or seek relief.

**When considering whether a special permit is appropriate under Section 6.02.1.b, the Board of Appeals shall consider the operating characteristics of the proposed use, 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.

Section 8.02.2 – Alteration or Extension

A special permit is required to alter or enlarge a non-conforming condition.

Ms. Curtis said that the Planning Board had no objection to this proposal to convert the storefront from retail space to a restaurant with 61 seats. The storefront is in a highly commercial and pedestrian area and is in very close proximity to rapid transit. As there is no onsite parking available at this location, and to encourage the use of public transportation for employees, the management should provide partially subsidized T passes to all restaurant employees, which is a condition that has been attached in similar Board of Appeals cases. The Board does have some concerns regarding the renovation of the storefront and the installation of the outdoor patio, but the Board would like to consider any and all exterior façade modifications and signage at a sign and façade design review meeting. The applicant is expected to pursue approval of façade modifications from the Planning Board should the special permit relief for parking be granted. Therefore, the Planning Board recommends approval of the proposal subject to the following conditions:

- 1. The restaurant's management shall implement an employee T-pass program, where management subsidizes at least 50 percent of the cost of monthly subway and bus T-passes for all of the restaurant's employees.**
- 2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final floor plan showing dimensions 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.**

Michael Shepard, Building Commissioner, delivered the comments from the Building Department. He said that the Building Department supported the proposal for a restaurant at 876 Commonwealth Avenue and fundamentally agreed with the conditions proposed by the

Planning Board. He said, however, that the requirement for the restaurant owner to provide subsidized T passes was difficult to enforce.

The Chairman asked whether any of the other members of the Board had any further questions. Both members indicated that they would vote in favor of the application.

There being no further questions and the Board having deliberated on this matter and having considered the foregoing testimony, the Board concludes that the requirements of **Section 9.05** of the Zoning By-Law have been satisfied and that it is desirable to grant a Special Permit granting relief from the provisions of **Section 6.02.1.b** of the Zoning By-Law, approving a waiver of up to 10 parking spaces or up to 50% of any increased parking requirement for the expansion of a non-residential use in a business district when alterations are entirely within an existing building. The Board further approved the issuance of a Special Permit under **Section 8.02.2** of the Zoning By-Law for alterations to a non-conforming structure.

The Board also considered Attorney Lipson's suggestion for an amendment to the Planning Board's condition requiring the management to subsidize at least 50 percent of the cost of T-passes for all of the employees and agreed that it should apply only to those employees who resided beyond a one-mile radius from the restaurant.

The Board considered:

- a. 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 of service requirements;
- b. the peak parking demand for the proposed use in relation to the peak parking demand generated by other uses in the area;

- c. the need for and provision of employee parking;
- d. the availability and/or shortage of existing public parking and transit facilities in the area.

The Board specifically makes the following 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.
- 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 voted unanimously to grant the requested relief subject to the following conditions:

- 1. The restaurant's management shall implement an employee T-pass program, where management subsidizes at least 50 percent of the cost of monthly subway and bus T-passes for those restaurant employees residing beyond a one mile radius of 876 Commonwealth Avenue. Evidence of such program shall be submitted to the Assistant Director for Regulatory Planning.**
- 2. Prior to the issuance of a building permit, all façade improvements to the building, which shall include the renovation of windows including consistently sized transoms throughout (for all ground floor uses), shall be submitted to the Planning Board for review and approval.**
- 3. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final floor plan showing dimensions 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.**

Unanimous Decision of
The Board of Appeals

Filing Date: August 17, 2009

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals



Jesse Geller, Chairman

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