



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459
617-796-1120

Petition: #313-23
Public Hearing:
10/03/23

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: October 3, 2023

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Cat Kemmett, Senior Planner

SUBJECT: **Petition #313-23**, for SPECIAL PERMIT/SITE PLAN APPROVAL to add 48 patio seats and remove eight parking stalls, and to amend Special Permit #172-98(2)

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



9-13 Kenneth Street

Project Description

Background

The subject property consists of four lots (9-13 Kenneth Street, 29 Kenneth Street, 118 Needham Street, and 122 Needham Street) totaling approximately 35,000 square feet with two multi-tenant commercial buildings and associated parking that is shared among the uses on those lots. District 118 Kitchen & Bar is a tenant in the single-story portion of the building located at 9-13 Kenneth Street. The restaurant currently has 99 dining seats.

The building is located just off Needham Street on the east side of the corridor. This area features a diverse variety of uses including single and multifamily residences, mixed-use structures, commercial uses, and open space. The properties on the western side of Needham Street are zoned Mixed Use 1 and the eastern side is zoned MU-2. The MBTA bus route 59 has a stop immediately adjacent to the property on Needham Street which connects to the commuter rail, Green Line, and other major bus routes.

Special Permit

Special Permit #172-98 was granted in 1998 and allowed for the restaurant use on the site to expand to 74 seats. That special permit was amended in 2009 to allow for 99 seats and a waiver of ten parking stalls.

The petitioner proposes removing eight parking stalls and converting that space into 48 outdoor dining seats. This would bring the total number of seats at the restaurant to 147. There are 50 parking stalls on the site, but of those only 49 are available for parking, with one stall used for a dumpster. With one existing stall unavailable, eight stalls being removed to accommodate outdoor seating, and 16 additional stalls required for the outdoor seating, the petitioner requires a waiver of 25 parking stalls in total and to amend the approved site plan to reflect the creation of the outdoor seating area. Should the special permit be approved, 40 parking stalls would remain for parking.

Analysis

The Planning Department is not concerned with the requested parking waiver. 49 parking stalls are currently available in the shared lot, so if eight are removed there will be 40 parking stalls remaining for the use of the two multi-tenanted buildings on the site. 118 Needham Street (which is owned by the petitioner and one of the parcels included in the site) is vacant and has remained so for over a year. The petitioner has stated that the additional seats created outdoor has resulted in less occupancy of the inside seating when weather allows for outdoor dining, so the amount of restaurant staff has remained the same and has not increased the amount of parking required for personnel. They also report that the majority of staff members are not expected to park on site, and many utilize car share apps like Uber or use public transportation to get to work. Overflow parking

is also available in the evening in a parking lot across the street when parking demand it at peak, which should help mitigate the loss of the stalls on site.

Because of the diverse variety of uses in this area, it is also possible that demand for parking at this site may be lower than what the ordinance requires. The complementary mix of retail, offices, and restaurants in the immediate vicinity of property lend itself to pedestrian traffic especially for lunch-time use of the restaurant.

The Director of Economic Development has written a brief memo in support of the petition (**Attachment C**) emphasizing the economic benefits of supporting local businesses and their importance in creating a unique sense of place. Allowing the flexibility to use underutilized parking as outdoor dining space can help activate the streetscape without significant increases in traffic or parking can help enhance the vitality of the Needham Street corridor.

I. Zoning Relief Requested:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
	Amend Special Permit #172-98(2)	S.P. per §7.3.3
§5.1.4 §5.1.13	To waive 25 parking stalls	S.P. per §7.3.3

For more details around the zoning analysis please refer to **Attachment A**.

II. Criteria for Consideration per §7.3.3. and/or §7.8.2.C.2:

- The site in MU-2 is an appropriate location for the amendment to Special Permit #172-98(2) and requested parking waiver (§7.3.3.C.1)
- The requested amendment and subsequent parking waiver will not adversely affect the neighborhood (§7.3.3.C.2)
- The requested parking waivers will not create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3)
- Literal compliance with the required amount of parking is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features (§5.1.13)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)

removeable concrete blocks (measuring 6 feet long and 3 feet high) topped with planters will be put in place seasonally between the outdoor dining area and the driveway as a buffer.

C. Parking and Circulation

Access to the parking area from the curb cuts on Rockland Street will remain unchanged, and the amount of paving on the site will remain the same. The petitioner has stated that this outdoor dining area will be open only from April 1 to October 31. When the outdoor dining is not in place the eight parking spaces occupied by the outdoor dining area would revert to parking.

The petitioner has had conversations with other neighboring businesses to informally use their parking area .

Proposed Conditions



D. Operations, Lighting, and Noise

The petitioner intends to operate the outdoor dining area from 11 am to 9 pm on weekends and weekdays seasonally. The petitioner has stated that there will be no live performances or piped music on the outdoor patio. No permanent exterior lighting is proposed, though temporary string lighting may be put up seasonally.

V. Interdepartmental Review:

No interdepartmental review is required at this time.

VI. PETITIONER'S RESPONSIBILITIES

The petition is considered complete.

ATTACHMENTS:

- Attachment A:** Zoning Review Memorandum
Attachment B: 2009 Council Order
Attachment C: Economic Development memo
Attachment D: DRAFT Council Order



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Attachment A
Telephone
(617) 796-1120
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(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney Heath
Director

ZONING REVIEW MEMORANDUM

Date: August 9, 2023

To: Anthony Ciccariello, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Katie Whewell, Chief Planner for Current Planning

CC: Mark Feldmen, MLF Consulting
Josh Solar, Wolcott Corporation
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request to add 48 patio seats and remove eight parking stalls, and to amend Special Permit #172-98(2)

Applicant: Wolcott Corporation	
Site: 9-13 Kenneth Street, 29 Kenneth Street, 118 Needham Street and 122 Needham Street	SBL: 83012 0003, 83012 0004, 83012 0005 and 83012 0006
Zoning: MU2	Lot Area: 35,000 square feet
Current use: Restaurant with 99 seats	Proposed use: Restaurant with 147 seats

BACKGROUND:

The property at 9-13 Kenneth Street is improved with a one-story mixed-use building and 51 surface parking stalls on 20,000 square feet of land. It shares its parking with 29 Kenneth Street, 118 Needham Street and 122 Needham Street. A special permit was granted to the combined site in 1998 and 2009 authorizing which authorized the number of restaurant seats at the restaurant at 9-13 Kenneth Street and waiving waived ten parking stalls in the shared parking lot.

The petitioners propose to remove eight parking stalls to be used for 48 outdoor dining seats in front of 9-13 Kenneth Street. The proposed seating requires an amendment to the most recent special permit to waive additional parking stalls and amend the approved site plan to allow the creation of the outdoor seating area.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Mark Feldmen, MLF Consulting, dated 7/14/2023
- Plan of Land, signed and stamped by Paul J. DiSimone, surveyor, dated 11/17/2003

- Compiled Existing Conditions Plan, prepared by Tetra Tech, dated 7/15/2009, submitted 7/14/2023
- Special permit #172-98(2)
- 07/14/23 MLF Consulting Final, submitted 7/14/2023

ADMINISTRATIVE DETERMINATIONS:

1. Special Permit #172-98 was granted in 1998 and allowed for the then existing prior restaurant use to expand to 74 seats. The special permit was amended in 2009 to allow for 99 seats and a waiver of ten parking stalls. The petitioners are now seeking to amend Special Permit #172-98(2) to allow the removal of eight parking stalls to establish an outdoor dining area which increases the seating by 48, for a total of 147.
2. There are 50 parking stalls on site for use by the businesses at 9-13 Kenneth Street, 29 Kenneth Street, 118 Needham Street and 122 Needham Street. Of those 50, 49 are available for parking, with one stall used for a dumpster. Special permit #172-98(2) allowed for an increase of seating to 99, and an associated waiver of ten stalls. The special permit assumed 50 parking stalls on site. The petitioner now seeks to remove eight parking stalls to be used seasonally for 48 restaurant seats. Per section 5.1.4, a restaurant requires one parking stall per every three seats. The additional 48 seats require an additional 16 parking stalls. With one existing required required stall unavailable due to the dumpster, eight stalls being removed to accommodate seating, and 16 additional stalls required for the outdoor seating, the petitioner requires a further waiver of 25 parking stalls per section 5.1.13.
3. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
	Amend Special Permit #172-98(2)	S.P. per §7.3.3
§5.1.4 §5.1.13	To waive 25 parking stalls	S.P. per §7.3.3

#172-98(2)

CITY OF NEWTON
IN BOARD OF ALDERMEN

December 7, 2009

09 DEC -9 PM 4: 49
CITY CLERK
NEWTON, MA. 02159

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, that the application meets the criteria established in §30-24 (d) (1)-(4), and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN to increase seating capacity at a restaurant to 99 seats and to waive additional parking spaces as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman Alderman George E. Mansfield:

1. The proposed Needham Street location is an appropriate location for an expanded restaurant use with a total of 99 seats, given its proximity to other complementary uses where it will increase the vitality of the Needham Street corridor.
2. The proposed changes to the storefront, including the proposed planters, will improve the appearance of the property and the Needham Street corridor in general.
3. The proposed installation of a bike rack and carpooling by employees to the site will reduce parking demand on the site.
4. Encouraging those employees who must drive to the restaurant to park on Kenneth Street will ensure that convenient parking is retained for customers.
5. The proposed configuration of parking and improvements to the sidewalk will reduce the potential for a nuisance or serious hazard for pedestrians or vehicles, will encourage walking, and will allow for safer pedestrian access to and from the site.
6. Evening use of parking in the parking facility at 37 Kenneth Street, to the extent that this facility is currently available and the owner has agreed to allow the petitioner use of this facility, will help satisfy the demand for parking for the proposed restaurant expansion at the evening peak.
7. The granting of a parking waiver for ten additional parking spaces will have no adverse effects in the parking and traffic circulation in the immediate vicinity of the restaurant, along the Needham Street corridor, or in adjacent residential neighborhoods.
8. The proposed use is consistent with the *Newton Comprehensive Plan* because it increases the vitality of the corridor as it transitions from industrial to retail, office, and residential uses.

PETITION NUMBER: #172-09

PETITIONER: Walcott Corp.

LOCATION: 118 Needham Street, Section 83 Block 12, Lots 3, 4, 5, 6 containing approximately 35,000 sq. ft. of land

OWNER: Walcott Corp.

ADDRESS OF OWNER: 1050 Commonwealth Avenue, Boston, MA 02215

TO BE USED FOR: Restaurant with 99 seats

CONSTRUCTION: Interior only

EXPLANATORY NOTES: Board Order #172-98, to amend site plan to reflect new parking configuration; Board Order #172-98, to increase the number of seats from 74 to 99; §30-13(b)(5) to allow a restaurant use with more than 50 seats in the MU-2 zone; §30-19 to allow a waiver of 10 required parking stalls; §30-23, for site plan approval; and §30-24, for approval of special permit.

ZONING: Mixed Use 2 District

This special permit supersedes prior special permits issued by Board Order #172-98, and consolidates and incorporates herein those conditions and provisions from such prior special permits that remain applicable, are still in full force and effect and are set forth in this special permit. Any conditions in such prior special permits not set forth in this special permit are null and void.

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with the plans:
 - a. "Plan of Land in Newton, Mass.," produced by Selwyn & Kirwin Associates, 11 Touro Ave., Medford, MA 02155, signed and stamped by Paul J. Simone, Professional Land Surveyor, and dated November 17, 2003
 - b. "Compiled Existing Conditions Plan, 116-122 Needham Street," produced by Tetra Tech, 10 Forbes Road, Braintree, MA 02184, and dated July 15, 2009
2. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
3. The petitioner shall replace the broken concrete sidewalk along Needham Street in front of its property with an asphalt sidewalk, including handicap-accessible ramping at both ends, if permitted by the Massachusetts Department of Transportation, and subject to the approval of the City Engineer and the Massachusetts Department of Transportation. The petitioner shall have until June 30, 2010, to complete such installation if permitted.

4. Any additional signage or modifications to signage shall require the review of the Urban Design Commission and the Director of Planning and Development.
5. No building permit shall be issued pursuant to this special permit/site plan approval until the petitioner has:
 - a. designated on plans the location of a bike rack for at least six bikes in a location that is visible from Needham Street to the approval of the Director of Planning and Development.
 - b. recorded a certified copy of this board order for the approved special permit/site plan with the Registry of Deeds for the Southern District of Middlesex County.
 - c. filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
6. No occupancy permit for the use covered by this special permit/site plan approval shall be issued until the petitioner has:
 - a. filed with the City Clerk, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that the sidewalk has been constructed to the standards of the Department of Public Works.
 - b. filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or registered engineer certifying compliance with Condition #1.
7. No withstanding the provisions of Condition #6.a. above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to installation of the sidewalk provided the petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining site improvements, including the sidewalk improvements, to ensure their completion.

Under Suspension of Rules

Readings Waived and Approved

23 yeas 0 nays 1 absent (Alderman Gentile)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on December 9, 2009. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:



(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

I, David A. Olson, as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on 12/9 and that NO APPEAL to said decision pursuant to M.G.Laws Chapter 40, Section 17 has been filed thereto.

ATTEST:



(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

From: [John Sisson](#)
To: [Cat Kemmett](#)
Cc: [Barney Heath](#)
Subject: Support for the proposed amendment the special permit enabling outdoor dining at District 118
Date: Thursday, September 28, 2023 3:24:56 PM

Dear Chair Lipof, Vice-Chair Kelley, and Esteemed Members of the Land Use Committee:

I am writing to express my support for the proposed amendment of an existing special permit to enable the outdoor dining area at District 118, the restaurant located just off Needham Street on property known primarily as 9-13 Kenneth Street.

Bora Goymen, the proprietor of District 118 and an immigrant entrepreneur, contacted me in May this year in some distress. During our first meeting, I discovered that he, as a new tenant in the space, had been unaware of the parking conditions in the special permit. Unfortunately, so were the City staff who had already approved the outdoor dining plan and its installation. The parking conditions were discovered only after the fact.

In the following months, City staff worked with Bora and the property owner to ensure they filed the application necessary to amend the special permit and enable the existing outdoor dining area to be in compliance. District 118's outdoor seating activates a slab or asphalt that would otherwise be used for the temporary storage of automobiles and creates welcoming frontage for patrons of the restaurant.

Locally-owned restaurants like District 118 do more than serve food and beverages. They contribute to Newton's sense of place. They create local jobs and generate property, personal, and sales/meals tax revenue. Their activity supports a regional food system. The economic benefits ripple out from these operations every day.

The rise of outdoor dining in American cities is perhaps the only silver lining of a pandemic which hit the entertainment, hospitality, and restaurant sectors especially hard. And the food service industry was already a notoriously difficult one. Restaurants have so many moving parts that operators must manage well to run a profitable business. On top of that, food service providers are subject to many state codes and municipal regulations, possibly more than any other commercial sector. On top of that, municipal regulations and special permits levy parking requirements.

The applicant's request for this parking relief seems most reasonable.

I must admit that, in my role as Economic Development Director, I would support almost any outdoor dining area wherever restaurant would like to situate it, provided that municipal oversight ensures the public's safety, the fare is good, and the service not too slow.

Respectfully submitted,

John Sisson

John Sisson, director of economic development
CITY OF NEWTON | Planning & Development
1000 Commonwealth Avenue, Newton, MA 02459
(617) 796-1122 o.
jsisson@newtonma.gov

#313-23
9-13 Kenneth Street

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit #172-98(2) to waive 25 required parking stalls as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The site in a Mixed Use 2 (MU-2) district is an appropriate location for the amendment to Special Permit #172-98(2) and requested parking waiver because adequate parking is available to meet the needs of the site without constructing additional stalls, and public transportation is available. (§7.3.3.C.1)
2. The requested amendment and parking waiver will not adversely affect the neighborhood because allowing some of the parking stalls on the site to be used for outdoor dining will activate the streetscape. (§7.3.3.C.2)
3. The requested amendment and parking waiver will not create a nuisance or serious hazard to vehicles or pedestrians because the existing curb cuts will remain unchanged (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. Literal compliance with the required amount of parking is in the public interest because constructing 25 additional parking stalls would require a substantial increase in impervious paving on the site. (§5.1.13)

PETITION NUMBER: #313-23

PETITIONER: Walcott Corporation

LOCATION: 9-13 Kenneth Street, 29 Kenneth Street, 118 Needham Street, and 122 Needham Street, Ward 8, Newton Highlands and Newton Upper Falls, on land known as Section 83 Block 12 Lots 03, 04, 05, and 06 containing

approximately 35,000 sq. ft. of land

OWNER: Walcott Corporation

ADDRESS OF OWNER: 1050 Commonwealth Avenue
Boston, MA 02215

TO BE USED FOR: Amend the prior Special Permit with site plan modifications to remove eight parking stalls to be used for outdoor dining seats and to waive 25 parking stalls.

CONSTRUCTION: No new construction proposed

RELIEF GRANTED: Special Permit per §7.3 to waive 25 parking stalls and amend Special Permit #172-98(2) (§5.1.4, §5.1.13)

ZONING: Mixed Use 2 District

This Special Permit/Site Plan Approval amends Council Order #172-98(2) by amending the site plan and increasing the parking waiver by 25 stalls up to 35 parking stalls. All other conditions of Council Order #172-98(2) remain in full force and effect except as modified below.

Approved, subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
 - a. A site plan prepared by Selwyn & Kirwin Associates, signed and stamped by Paul J. DiSimone, professional land surveyor, dated 11/17/2003
 - b. Compiled Existing Conditions Plan, prepared by Tetra Tech, unsigned and unstamped, dated 7/15/2009
2. The petitioner shall not operate the restaurant with more than 148 seats.
3. No Final Inspection/Occupancy Permit for the use covered by this special permit shall be issued until the petitioner has:
 - a. Recorded a certified copy of this council order for the approved Special Permit with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.