

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, JUNE 11, 2013

Present: Ald. Hess-Mahan (Chairman), Ald. Laredo, Albright, Crossley, Schwartz, Fischman, and Harney; 1 vacancy; also present: Ald. Rice  
City staff: Alexandra Ananth (Chief Planner for Current Planning), Robert Waddick (Assistant City Solicitor), Linda Finucane (Assistant Clerk of the Board of Aldermen)

*Public Hearings were held on the following items:*

#307-12(2) WMACH, INC/THE CHEESECAKE FACTORY, INC. petition to AMEND special permit #307-12, granted on 12/20/12, which permitted three restaurants over 50 seats, waived up to 111 parking stalls, and permitted a sign package which includes secondary signs larger than 50 square feet, in order to construct a 131-square foot enclosed vestibule within the previously permitted 1,118 patio area and to erect two additional secondary signs at 199 BOYLSTON STREET, Ward 7, in a district zoned Business 1. Ref: Sec. 30-24, 30-23, 30-11(k), 30-20(f)(2), 30-20(l), 30-21(b) of the City of Newton Rev Zoning Ord, 2012.

ACTION: PUBLIC HEARING CLOSED; APPROVED 7-0

NOTE: The petition was presented by attorneys William Shaevel and Ashley Walter of Shaevel & Krems. The Cheesecake Factory will occupy one of the three spec restaurants approved in special permit #307-12. The space is located at the far right of the interior mall closest to Bloomingdales Men's and Home Store. The petitioner is seeking to amend the special permit to add a 131 square-foot vestibule to this portion of the building and to add two secondary signs to identify The Cheesecake Factory. The two proposed sign are in addition to a previously-approved 300 square-foot sign for this space. One secondary sign, which exceeds the 50 square feet permitted, is 97 square feet, and will be located on the east corner façade of the interior mall facing Hammond Pond Parkway. The other sign, which qualifies as a second secondary sign, is 4.25 square feet and is located immediately above the proposed vestibule entry. The signs have been reviewed by the Urban Design Commission, which recommends approval. The proposed vestibule, which is located in a portion of the 1,118 square foot area approved for patio seating, will help conserve energy and provide a sheltered place for patrons waiting to be seated. In addition, at the suggestion of the Planning Department, the petitioner will provide two handicapped parking stalls in front of the restaurant and five "to go" parking spaces as well as an HP ramp and new crosswalk. There are no changes proposed to the number of parking spaces or to traffic circulation.

Joe Avotins, Senior Project Manager from The Cheesecake Factory's corporate office in Irvine California explained that in addition to the weather factor, the vestibules are a brand identity for The Cheesecake Factory. The company now has 174 locations across the United States and the Mideast. Mr. Avotins said the CEO/founder of The Cheesecake Factory personally vets the designs of all the restaurants and he assured the committee that only quality materials are used in

construction.

There was no public comment.

In working session, it was confirmed that 987 square feet will remain in the outdoor patio area for seasonal seating. The committee complimented the petitioner on the creation of a more detailed separation of the seating from the public. Alderman Laredo moved approval of the petition finding that the proposed 131 square-foot addition will not be substantially more detrimental to the neighborhood than the existing building and the proposed signs are in the public interest for way finding at the site. The motion to approve carried 7-0.

#160-13      ARTHUR X. DUFFY, TRUSTEE OF SYLVAN AVENUE REALTY TRUST  
petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a garage of 973 sq. ft. at 44 SYLVAN AVENUE, West Newton, Ward 2, on land known as SBL 32, 53, 51, containing approximately 43,000 sq. ft. of land in a district zoned Single Residence 1. Ref: Sec, 30-24, 30-23, and 30-8(b)(7) of the City of Newton Rev Zoning Ord, 2012.

ACTION:      PUBLIC HEARING CLOSED; APPROVED 7-0

NOTE: The petitioner was represented by attorneys Jason Rosenberg and Laurance Lee. The petitioner is in the process of constructing a new by-right single-family dwelling with an attached two-bay garage that contains a 973 square feet. A garage exceeding 700 square feet is allowed if the additional space is partitioned off and not used for a third vehicle. The new owner Edward DeNoble, who for the past 13 years has resided at 69 Prince Street, decided that with a new driver in the family it would make sense to have a three-bay garage. There is no change in the footprint of the permitted house. The only proposed physical change is the addition of a third garage door. The garage does not face the street; it is located 40 feet from the closest side lot line, which is an empty lot. The petitioner is proposing extensive landscaping including wood fencing and stone walls.

Robert Gervis, 204 Forest Avenue, spoke in support of the petition.

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In working session, there was little discussion. The committee commented on the handsomeness of the house and Alderman Albright moved approval finding that the 43,000 square-foot site is appropriate for the 973 square-foot garage; it will not adversely affect the neighborhood; the dwelling has a by-right building permit and the addition of a third bay in the garage will not change the footprint of the dwelling that meets open space and lot coverage requirements. Alderman Albright's motion carried 7-0.

#177-13      SHARON BURNS, FARMSTEAD TABLE/STEPHEN WEISBERG petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to allow more than fifty seats in a restaurant and to waive the eight additional parking spaces required by the proposed additional seats at 71 UNION STREET, Ward 6, Newton Centre, on land known as SBL 61, 36, 8, located in a district zoned Business 1. Ref: Sec 30-24, 30-23, 30-11(d)(9), 30-19(d)(13), 30-19(m)of the City of Newton Rev Zoning Ord, 2012.

**ACTION:**      PUBLIC HEARING CLOSED; APPROVED 7-0

**NOTE:** The petitioner, who opened her restaurant last August, wishes to add up to 20 outdoor seasonal seats in addition to the 48 interior seats. A special permit is required for a restaurant with more than 50 seats. In addition, twenty more seats and additional staff create a parking demand of eight parking stalls. As there is no parking on the site the petitioner is seeking relief to waive the number of required parking stalls. The petitioner proposes to locate the outdoor seats on an existing 400 square-foot deck to the rear of the building which abuts the Sovereign Bank parking lot. The only physical changes proposed are a new landing and staircase down to the basement level to provide a second means of emergency egress to meet code requirements. The deck is enclosed with lattice work but has no roof. A structural engineer has verified the deck is structurally sound. One long table, which is a trend in the restaurant industry to encourage conviviality among patrons, will accommodate twelve diners,.

The petitioner submitted a parking survey showing the availability of parking for the proposed expanded use. The study was undertaken last summer over the course of seven days during lunch hours when parking in Newton Centre is most scarce. The study appears to show sufficient parking capacity within a comfortable five-minute walk. The petitioner said that approximate 75% of her employees use public transportation or bike; other employees park at the long-term meters in the Cypress Street municipal lot. The petitioner doesn't believe that the additional seating will cut down on waiting time, since most patrons have reservations and if they don't it is long wait.

There was no public comment.

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In working session, Alderman Fischman asked if the petitioner would consider subsidizing T passes for employees. Alderman Harney pointed out that the MBTA no longer offers programs to assist employers who wish to subsidize passes. Also, this type of condition is difficult for the city to enforce. The Planning Department suggested that since part of the relief is to waive eight parking spaces the petitioner contribute to the *Newton Centre Parking and Pedestrian Improvements Fund* to help mitigate parking impacts on the neighborhood. Although other petitioners such as Panera Bread and Terry O'Reilly's have made voluntary contributions, several committee members objected conditioning the special permit to require a voluntary contribution. Others suggested pro-rating the amount of the contribution. Alderman Laredo and Schwartz were troubled by what appears to be the lack of consistency associated with this type of contribution. The Chairman pointed out that there is a docket item in Zoning & Planning to allow payments-in-lieu of providing required off-street parking spaces when parking spaces are waived as part of a special permit application; however, it doesn't seem to have much support and the cost proposed for each space is very high. Alderman Schwartz and Laredo both said and

the majority of the committee agreed that the petitioner could at any time contribute to the fund and/or offer T pass subsidies to her employees. The committee did not vote to include either condition. Alderman Schwartz moved to approve the petition finding that the additional seat will be seasonal only; the business is located near four municipal parking lots and the MTBA; studies indicate there is sufficient parking in Newton Centre, particularly in the evening; literal compliance with the parking requirements is impracticable because the site has no parking.

All other items were held without discussion and the meeting was adjourned at approximately 11:00 PM.

Respectfully submitted,  
Ted Hess-Mahan, Chairman