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Candace Havens
Director

MEMORANDUM

Public Hearing Date: January 10, 2012
Land Use Action Date: March 20, 2012
Board of Aldermen Action Date: April 2, 2012
90-Day Expiration Date: April 3, 2012

DATE: January 6, 2011

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development
Eve Tapper, Chief Planner Current Planning ^{ET}
Derek Valentine, Senior Planner

SUBJECT: **Petition #416-11**, K.J.R., INC/JOSEPH BONTEMPO, petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING USE to expand the seating capacity of an existing restaurant by 15 seats to allow for an outdoor, roofed patio at 7 WEST STREET, Ward 1, Nonantum, on land know as SBL 14,14,1, containing approximately 2,850 square feet of land in a district zoned MULTI-RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-21(b), 30-19(d)(13), 30-15(m), 30-15 Table 1, and 30-9 the City of Newton Rev Zoning Ord, 2007.

The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



EXECUTIVE SUMMARY

The property at 7 West Street consists of 2,850 square feet of land in a Multi-Residence 2 zone. The site is improved with a single-story commercial building that has been host to a series of restaurants over the course of the past several decades.

The current tenant, West Street Tavern operates a restaurant and bar with 53 seats. The petitioner is seeking a special permit to expand the dining area by creating a seasonal patio area that will accommodate 15 additional seats. The new seating area will be located to the rear of the building, replacing two nonconforming accessory structures. The patio area will be enclosed by a pergola. The proposed structure will be less nonconforming with respect to side setbacks than the accessory structures it will replace.

There is currently no parking provided on the petitioner's site. In order to accommodate the parking demand generated by the additional seating and the associated staff increase from six to nine employees, the petitioner is seeking a waiver for six parking stalls.

Since the petitioner's site is located within a village center, the Planning Department supports the continued viability and expansion of non-residential uses at this site. Furthermore, the site has operated as a restaurant for decades. However, the petitioner is requesting a moderately-sized parking waiver and cannot provide parking on-site. The Department will continue to work with the petitioner prior to the working session to discuss mitigation that will ease the impact on the neighborhood, while benefiting the future patrons of the Tavern.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When considering this request, the Board should consider whether the following findings apply:

- 1) The expansion of a nonconforming use will not be substantially more detrimental to the neighborhood for the following reasons:
 - a) The proposed patio expansion is located to the rear of the existing building and will not be visible from the public right-of-way.
 - b) The expansion of a nonconforming restaurant use at this site will contribute to the vitality of a village center.
 - c) The proposed patio will be enclosed with a stockade fence/pergola structure which will minimize the audible and visual impact of the patio on the surrounding neighborhood.
 - d) The proposal is for a modest increase in number of seats and limited hours of operation.
- 2) The replacement of two nonconforming accessory structures with another

nonconforming accessory structure (the pergola) will not be substantially more detrimental to the neighborhood than the existing accessory structures for the following reasons:

- a) The proposed pergola will be setback 2.5' from the side property line, making it less nonconforming than the existing structure which is 1.71' from that same property line.
- 3) The extension of the nonconformity with respect to lot coverage is not substantially more detrimental to the neighborhood than the existing conditions because the area proposed for the patio is already surfaced with bituminous concrete.
- 4) Literal compliance with the parking ordinance is impractical and a waiver for six required parking stalls is appropriate for the following reasons:
 - a) The petitioner's site consists of only 2,805 square-feet of land, almost entirely occupied by the commercial building.
 - b) The site is within close proximity to public transportation as well as a municipal parking lot, therefore a waiver will not have adverse effects on traffic, circulation, and parking in the area.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The property is located on the south side of West Street, one block south of Watertown Street in Nonantum. The petitioner's site is in close proximity to a number of other commercial uses, located on Watertown Street and intersecting streets. It is also within two blocks of two MBTA bus stops and a municipal parking lot. The neighborhood consists of a broad mix of uses. In the vicinity of the Watertown Street and West Street intersection there are mixed-use buildings with ground-floor commercial space and apartments above. On both sides of West Street, there are single-family residential and commercial uses.

Immediate abutters of the petitioner's site include a private parking lot servicing commercial uses to the north, a multi-family residential property to the west, and a single family residence to the east of the site. The outdoor seating area is being proposed for the southeast corner of the site.

B. Site

The site consists of 2,805 square feet of land in the Multi-Residence 2 zone. The lot is improved with a single-story commercial building. The area behind the building is paved and contains two small nonconforming accessory structures. A 15' right of way in favor of the petitioner's site is located over 372 Watertown Street, the adjacent property. A stockade fence is located along the eastern property line, with a chain link fence just over the southern property line.

III. PROJECT DESCRIPTION AND ANALYSIS



Existing Accessory Structures



Street Façade of the Building

A. Land Use

The petitioners are proposing an increase in the intensity of the restaurant use by adding 15 outdoor seats for a total of 68 seats.

B. Building and Site Design

No changes are proposed to the building facades as part of this project. A 16' by 30' patio would be added to the west of the existing commercial building. The patio area would be 2.5 feet from the eastern property line, which is a preexisting nonconformity. The seating area would consist of five tables with a total of 15 seats, along with a server station. The patio will be covered with an 11'6" tall pergola structure with a Plexiglas roof.

It is unclear how garbage disposal will be managed. A dumpster is currently located at the site of the proposed patio. The petitioner should clarify the method of waste disposal. If dumpsters are going to continue to be located at the rear of the property, a fenced enclosure should be provided along with an updated site plan indicating the location of the dumpsters.

C. Parking and Circulation

As stated earlier, the site provides no off-street parking facilities. However, as the site has been used for various restaurant uses before parking regulations were adopted in Newton, a certain number of parking stalls are considered grandfathered to this site. The numerous restaurants that have occupied the site provide a parking credit of 20 stalls based on the parking demand for the existing 53-seat facility. The proposed expansion to 68 seats and up to nine employees requires 26 parking stalls. Thus, the petitioner is seeking a special permit for a waiver of six required parking stalls.

Generally, a parking plan is requested prior to the public hearing. However, because the proposed outdoor seating is a seasonal amenity, parking counts taken in the early winter would not provide an accurate portrayal of the parking availability during the height of the summer. The petitioner should work with the Department of Planning

and Development and the Commissioner of Inspectional Services to develop a parking management plan should the demand for parking regularly exceed the local supply.

The petitioner's use will depend exclusively on off-site parking, including City-owned parking facilities. The Planning Department recommends the addition of directional signage routing patrons of the Tavern to the nearest municipal lot on Chapel Street. The Department can discuss this possible mitigation with the petitioner prior to the working session.

D. Landscape Screening, Lighting, and Signage

The petitioners have not proposed any changes to the lighting or signage as part of this petition. If the petitioner is proposing lighting for the outdoor dining area, it should be added to the plans. Care should be used to choose lighting types which minimize the spill of light onto adjacent residential properties.

The patio enclosure is a stockade and lattice fence. There is also an existing stockade fence on the eastern property line. The combination of these fences will provide both visual screening as well as noise mitigation.

IV. COMPREHENSIVE PLAN

The *2007 Newton Comprehensive Plan* encourages an economic development program that strengthens business in Newton's village centers. It supports fostering viable businesses to enhance the commercial real estate tax and employment bases and encouraging such businesses to embrace locations in vibrant, attractive, mixed-use village centers. An expansion of the petitioner's restaurant is consistent with these goals.

The *Comprehensive Plan* also encourages building connections between modes of transportation. Providing signage, as recommended, directing motorists to municipal lots will facilitate the connection between vehicle travel and pedestrian circulation to the petitioner's site as well as other amenities in the village center.

V. TECHNICAL REVIEW

A. Technical Considerations (Section 30-15 & 30-19). The Zoning Review Memorandum dated July 26, 2011 (SEE ATTACHMENT "A"), provides an analysis of the proposal with regard to zoning. The petitioners must seek a special permit to extend a nonconforming restaurant in a multi-residence zone, to replace two nonconforming accessory structures with a single nonconforming accessory structure, to extend nonconforming lot coverage, and to waive six required parking stalls.

VI. ZONING RELIEFS SOUGHT

As stated above, based on the completed Zoning Review Memorandum the petitioners are seeking approval through or relief from:

- Section 30-9 & 30-21(b), to allow the extension of a nonconforming restaurant use;
- Section 30-15(m) & 30-21(b) to allow the replacement of two nonconforming accessory structures with a less nonconforming accessory structure;
- Section 30-15 Table 1 & 30-21(b) To allow the extension of a nonconformity with respect to lot coverage;
- Section 30-19(d)(13) & 30-19(m) To waive six required parking stalls

VII. PETITIONERS' RESPONSIBILITIES

- The petitioner should indicate the method of waste disposal on site. If a dumpster is proposed, it shall be screened appropriately and shown on a site plan.
- The petitioner should indicate how they will encourage the use of alternative transportation modes by employees.
- The petitioner should continue to work with the Planning Department on mitigation efforts for the parking waiver of six stalls.

ATTACHMENTS

ATTACHMENT A: ZONING REVIEW MEMORANDUM DATED JULY 8, 2011

ATTACHMENT B: ZONING MAP

ATTACHMENT C: LAND USE MAP



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Mayor

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Candace Havens
Director

ZONING REVIEW MEMORANDUM

Date: July 26, 2011

To: John Lojek, Commissioner of Inspectional Services

Fr: Seth Zeren, Chief Zoning Code Official
Eve Tapper, Chief Planner for Current Planning ET

Cc: G. Michael Peirce, attorney representing applicant
Candace Havens, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to allow an increase in FAR

Applicant: K. J. R., Inc. Jessica B Roche, President	
Site: 7 West Street	SBL: 14014 0041
Zoning: MR2	Lot Area: 2,850 square feet
Current use: Restaurant with 53 seats	Proposed use: Restaurant with 68 seats

Background:

The property at 7 West Street consists of a 2,850 square foot lot located in the MR2 zone currently occupied by a single-story commercial building. A succession of restaurants has occupied the building for decades predating the residential zoning of the site. The current tenant, West Street Tavern and Restaurant has proposed to construct a covered, seasonal patio in the rear lot with 15 additional seats.

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

- Site plan, signed and stamped by Joseph R. Porter, Surveyor, dated 6/22/11
- Area plan, signed and stamped by Joseph R. Porter, Surveyor, dated 6/22/11
- Sample photographs of a structure similar to the one proposed, undated, no location given
- A signed letter from G. Michael Peirce, dated 7/21/11, attesting that the property is a legally nonconforming 53-seat restaurant, including a floor plan and abutters notice from the current tenant's 2008 opening, showing 53 seats at that time

ADMINISTRATIVE DETERMINATIONS:

1. The existing restaurant is a nonconforming use in the MR2 zone. To use the site in the proposed manner, the applicant must obtain a special permit from the Board of Aldermen, per Section 30-21(b) for an extension of an existing nonconforming use.
2. The rear yard of the property is currently occupied by two sheds. The applicant proposes to remove the sheds and replace them with the new pergola covering a patio. Because the proposed structure would have an impervious roof covering, it qualifies as an accessory structure and must meet the dimensional controls of Section 30-15(m), below.

Section 30-15(m)	Required/Allowed	Existing	Proposed
Side Setback	5 feet	1.41 feet	2.5 feet
Rear Setback	5 feet	15.19 feet	6 feet
Building Height	22 feet	8 feet	15 feet
Stories	1.5	1	1

The proposed accessory structure would be less nonconforming than the existing accessory structures. The applicant must obtain a special permit from the Board of Aldermen, per Section 30-21(b), to construct the accessory building as proposed.

3. The MR2 zone requires minimum open space and a maximum amount of lot coverage, as summarized in the table below:

Section 30-15 Table 1	Required/Allowed	Existing	Proposed
Min. Open Space	50%	5.1%	No change
Max. Lot Coverage	30%	51.8%	62.8%

The property is currently nonconforming with regard to both required open space and allowed lot coverage. The rear yard is already fully paved and therefore the new construction does not reduce the open space available. The applicant must obtain a special permit from the Board of Aldermen per Section 30-21(b) to allow an increase in the nonconforming lot coverage for the proposed accessory structure.

4. The applicant proposes to increase their number of seats from 53 to 68 total seats with a commensurate increase to maximum employees from six to nine. Per the following table, the applicant would require six additional off-street parking stalls. The applicant's site plan proposes no additional off-street parking stalls. Therefore, the applicant must obtain a special permit from the Board of Aldermen to waive six required parking stalls per Section 30-19(m).

Proposed	Parking Formula	Required Parking
68 seat restaurant with no more than 9 employees on the largest shift	1 stall per 3 seats and 1 stall per 3 employees	26 (A)
Existing	Parking Formula	Parking Credits
53 seat restaurant with no more than 6 employees on the largest shift	1 stall per 3 seats and 1 stall per 3 employees	20 (B)
Off-street parking spaces		0 (C)
Additional Spaces Required:		6

Calculation per §30-19(c)(2): A (26) – B (20) + C(0) = Required number of parking stalls (6)

5. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Use</i>	<i>Action Required</i>
§30-9, §30-21(b)	Allow an extension of a nonconforming use	S.P. per §30-24
<i>Ordinance</i>	<i>Structure</i>	<i>Action Required</i>
§30-15(m), §30-21(b)	Allow the replacement of two nonconforming accessory structures with a less nonconforming accessory structure	S.P. per §30-24
<i>Ordinance</i>	<i>Site</i>	<i>Action Required</i>
§30-15 Table 1, §30-21(b)	Allow an extension of a nonconformity with regard to lot coverage	S.P. per §30-24
<i>Ordinance</i>	<i>Parking</i>	<i>Action Required</i>
§30-19(d)(13), §30-19(m)	Waive six required parking stalls	S.P. per §30-24

416-11

Zoning 7 West Street

*City of Newton,
Massachusetts*

Legend	
	Mult-Residence 2
	Mult-Residence 4
	Business 1
	Business 2
	Business 5
	Manufacturing
	Public Use



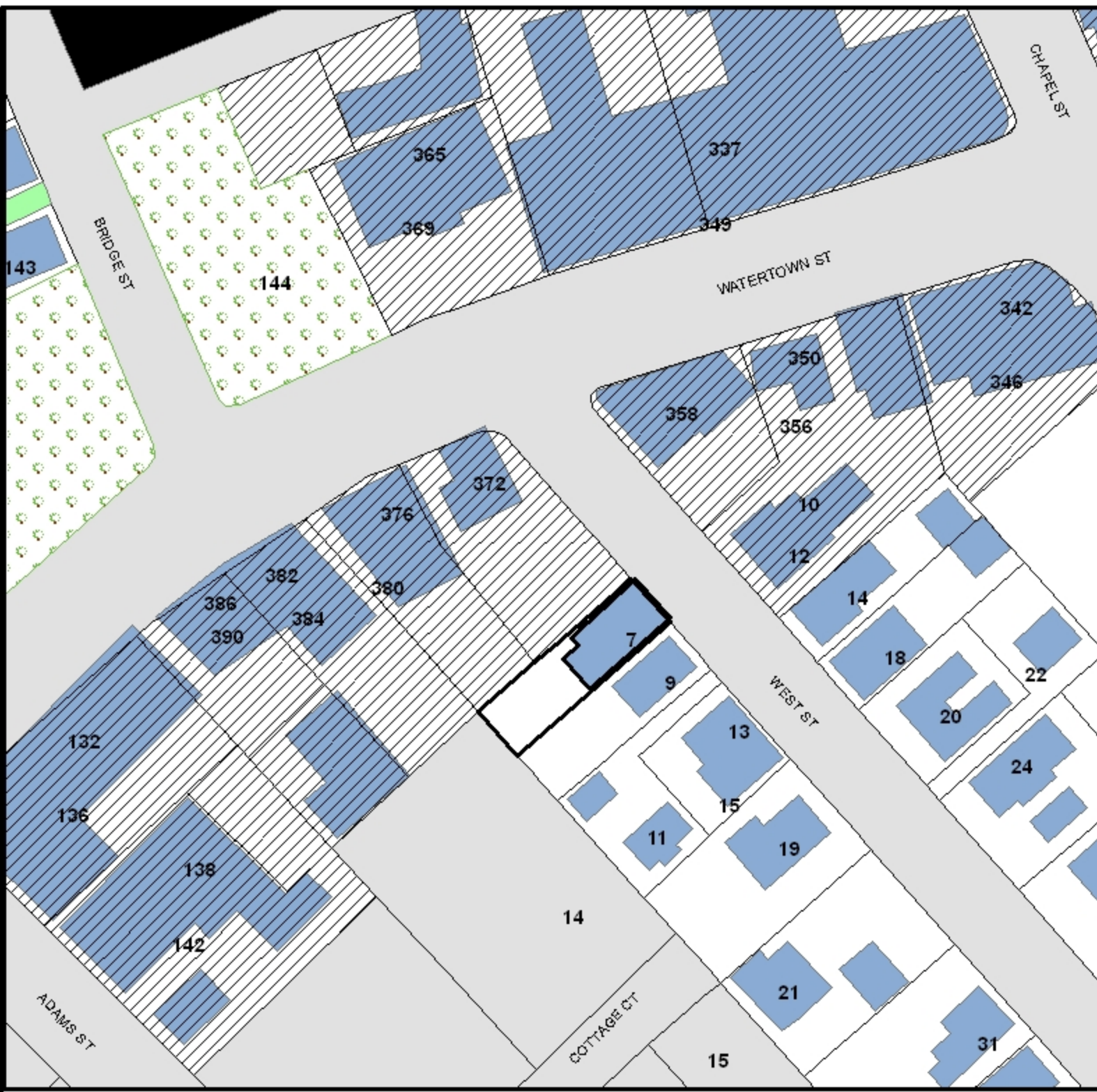
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CITY OF NEWTON, MASSACHUSETTS
 Mayor - Seth D. Warren
 GIS Administrator - Douglas Greenfield



Attachment B

Map Date: December 22, 2011



416-11

Land Use 7 West Street

*City of Newton,
Massachusetts*

Legend

-  Single Family Residential
-  Multifamily Residential
-  Commercial
-  Mixed Use



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CITY OF NEWTON, MASSACHUSETTS
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Attachment C

Map Date: December 22, 2011

