

G. MICHAEL PEIRCE, ESQ.

ATTORNEY AT LAW

April 17, 2012

IN HAND DELIVERY

John Lojek, Commissioner of Inspectional Services
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Re: 7 West Street/Board Order #416-11

Dear Commissioner Lojek:

I am writing pursuant to Condition 8. b. and c. of the above-referenced board order. Please be advised that this board order was recorded in the registry on April 12, 2012, in Book 58878, Page 201. A copy of the document as recorded is attached hereto.

Very truly yours,


G. Michael Peirce

Cc: Candace Havens, Director of Planning
Linda Finucane, Land Use Committee Clerk
Karl Roche

David A. Olson, CMC
Newton, MA 02459

2012 APR 17 PM 1:46

RECEIVED
Newton City Clerk

Newton Wellesley Executive Office Park
60 Walnut Street, 4th Floor • Wellesley, Massachusetts 02481
Tel: 781-239-0400 Fax: 877-243-0405
mpeirce@gmpeircelaw.com

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2012 00072742

Bk: 58878 Pg: 201 Doc: DECIS
Page: 1 of 4 04/12/2012 10:08 AM

CITY OF NEWTON

IN BOARD OF ALDERMEN

March 19, 2012

RECEIVED
Newton City Clerk
#416-11
2012 MAR 21 PM 3:29
David A. Olson, CMC
Newton, MA 02459

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, 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 EXTEND A NONCONFORMING USE to expand the seating capacity of an existing restaurant by 15 seats to allow for an outdoor, roofed patio as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman Alderman Ted Hess-Mahan:

West Newton

BK 2988689319

1) The expansion of the nonconforming restaurant 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.
- b) The expansion of an existing restaurant use in this location is consistent with the 2007 Newton Comprehensive Plan, which supports strengthening unique and viable businesses that contribute to the vitality of Newton's village centers.
- 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 of 15 seats and will have limited hours of operation.
- e) The patio will be staffed when in use.
- f) The proposed patio will be a seasonal use.

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.

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2012 APR 17 PM 1:46
David A. Olson, CMC
Newton, MA 02459

A True Copy
Attest

City Clerk of Newton, Mass.

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.
- c) The petitioner will provide wayfinding signage directing patrons to municipal parking facilities.

PETITION NUMBER: #416-11

PETITIONER: Jessica B. Roche/K.J.R., Inc.

ADDRESS OF PETITIONER: 7 West Street, Newton, MA

LOCATION: 7 West Street, Section 14, Block 14, Lot 1 containing approximately 2,850 square feet of land in the MR 2 Zone

OWNER: Joseph Bontempo ✓

ADDRESS OF OWNER: 420 Fuller Street, West Newton, MA 02456

TO BE USED FOR: Expansion of seating capacity for existing restaurant to accommodate 15 additional seats in an enclosed patio

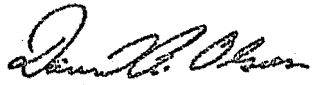
CONSTRUCTION: Wood pergola and fence

EXPLANATORY NOTES: Section 30-9 & 30-21(b), to allow the extension of a nonconforming restaurant use; Section 30-15(m) & 30-12(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 an extension of a nonconforming lot coverage; and Section 30-19(d)(13)&30-19(m) to waive six required parking stalls

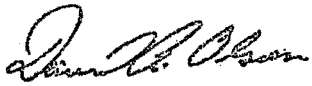
ZONING: Multi-Residence 2

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 following plans :

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- "Site Plan Showing Proposed Conditions at 7 West Street, Newton, MA", prepared by VTP Associates, Stamped by Joseph R. Porter, Professional Land Surveyor, dated June 22, 2011 and revised September 8, 2011.
 - Assessor's Map modified by the petitioner to indicate the location of four (4) wheel-off containers for the removal of trash, received February 28, 2012.
 - "West Street Tavern and Restaurant Proposed Outdoor Seating Area", prepared by Leah Greenwald, Registered Architect, dated September 7, 2011 and revised February 24, 2012 including the following:
 - a. Sheet A1 Side Elevation from Parking Lot
 - b. Sheet A2 Plan and Detail
2. Should the parking demand generated by this use routinely exceed the neighborhood supply of parking, as determined by the Commissioner of Inspectional Services, the petitioner shall submit a parking management plan for review and approval by the Director of Planning and Development and the Director of Transportation.
 3. Trash bins will be located according to plans submitted and will be enclosed with a stockade fence. This area is to be kept clean and the enclosure shall remain closed at all times.
 4. Hours of operation for the patio will be by 10:00 AM to 10:00 P.M.
 5. There will be no outdoor entertainment (live or recorded) or amplified sound in the patio area.
 6. The petitioner will design, locate, and install signage directing patrons to the Chapel Street Municipal Lot, subject to approval by the Director of Planning and Development and the Director of Transportation.
 7. The petitioner shall provide current information on their website and on their menus directing patrons to available neighborhood parking.
 8. No building permit shall be issued pursuant to this special permit/site plan approval until the petitioner has:
 - a. Provided details of the garbage bin enclosure for approval by 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;
 - d. obtained a statement from the Director of Planning and Development that all plans are consistent with Condition #1.
 9. No occupancy permit for the use covered by this special permit/site plan approval shall be issued until the petitioner has:
 - a. provided a statement by a registered architect certifying that the patio has been

Attest

City Clerk of Newton, Mass.

- built in accordance with plans referenced in Condition #1;
- b. Installed directional signage in accordance with Condition #5.

Under Suspension of Rules
Readings Waived and Approved
24 yeas 0 nays

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 March 21, 2012. 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 3/21 and that NO APPEAL to said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:



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

