

William H. Shaevel
Kenneth A. Krems
Daniel S. O'Connor
David R. Jackowitz
Amy Rosengarten Waksler
Stephen J. Allard
Ashley F. Walter
Laura A. Elkayam

Lisa O'Brien, Senior Paralegal
Alice Van Zandt, Paralegal
Kim Caranfa, Paralegal
Danielle Picarski, Paralegal

June 7, 2013

RECEIVED
NEWTON CITY CLERK
2013 JUN -7 PM 3:13
David A. Olson, CMC
Newton, MA 02459

Land Use Committee
1000 Commonwealth Avenue
Newton, MA 02459

Alderman R. Lisle Baker
Alderman Ruthanne Fuller

Re: **Chestnut Hill Mall**
199 Boylston Street
Application to Amend Special Permit #307-12

Dear Aldermen:

This petition involves two things: First, to convert 131 sq. ft. of outdoor patio space to create an enclosed entry vestibule and, second, to approve two signs. See below for a summary.

Additionally, since this is a relatively minor matter and time has become important to relocating the restaurant, we will be requesting that the Land Use Committee consider voting on the matter at the hearing without putting it over to a working session.

BRIEF HISTORY:

As you are aware, the Mall at Chestnut Hill was the recent recipient of several items of zoning relief under Special Permit #307-12. In summary, the Board approved the following relief for the site: 1) three restaurants with more than 50 seats; 2) Waiver of 111 parking spaces; 3) Additional signage:- one (1) in excess of 50 sq. ft. for each of those restaurants facing Rte. 9 and a fourth sign over the entrance of the Mall; 4) Addition of 1,731 sq. ft. of outside restaurant patio seating; and 5) Physical improvements to the Rte. 9 façade and the Rte. 9 parking lot. At the time we last appeared before you, we had not yet tenanted the approved restaurant spaces and the design area was presented conceptually. Since then, we have entertained leasing discussions with The Cheesecake Factory, Inc. who has specific needs and requirements should they occupy one of our approved restaurant spaces under Permit #307-12. They intend to move from the Atrium, which is no longer a retail mall.

THE CHEESECAKE FACTORY, INC:

This tenant, both an exciting prospect for Simon Malls and for the City as a whole, requires modest build-out and refurbishment to achieve the Cheesecake commercial envelope, while respecting the location and zoning constraints at this particular site. By way of a review of the application and plans, it will be clear that Cheesecake only desires the following modifications to the special permit:

1. A 131 sq.ft., enclosed vestibule, within the previously permitted 1,118 sq. ft area for patio seating ;
2. Two new secondary signs, in addition to the previously permitted 300 sq. ft. sign. See attached plan.

At the Planning Department's suggestion, Cheesecake's project will also result in two new marked crosswalks at the site, both of which will be painted with reflective thermo plastic paint or epoxy; installation of a handicap ramp at Cheesecake's entry; creation of two new handicap stalls and "to go" parking in front of Cheesecake's main entry. The locations of these components are visible in the selected plans included herewith.

Cheesecake desires an enclosed vestibule for purposes of energy conservation (heat retention), to provide cover to patrons, discourage loitering in or near the street, and to highlight and direct pedestrian entry. The enclosed vestibule, a mere 131 sq. feet, does not intrude in to the sidewalk and is located within, effectively consuming some of, the previously permitted outdoor patio space.

Conversely, the additional signage serves the purpose of highlighting and directing pedestrian entry at Cheesecake and is also necessitated by the restaurant's unique location on a corner façade. Cheesecake proposes a very small 4.25 sq. ft. directory sign above its exterior vestibule entry and a 97 sq. ft. sign on its corner façade facing Hammond Pond Parkway. These signs are in addition to the permitted 300 sq. ft. main sign on the Rte 9 façade under Permit #307-12. All three signs have been reviewed by the Urban Design Commission who approved the 300 sq. ft. sign and the smaller, 4.25 and 97 sq. ft. signs, contingent upon receiving the necessary special permit(s) from the Board of Aldermen.

Notably, Cheesecake's proposal will not trigger any modifications to the parking analysis as it relates to the parking waiver previously approved under the Special Permit.

RELIEF REQUESTS AND CALL FOR RECOMMENDATION TO BOARD ON TUESDAY

The proposal is very simple; however, it is not "materially consistent" with the plans submitted for Board Order #307-12 insofar as neither the vestibule nor additional signs (4.25 sq. ft. entry and 97 sq. ft. corner sign) could have been contemplated at that time as the space was not tenanted. Thus, for the vestibule, special permit relief is necessary in order to convert 131 sq.ft. in a structure containing 20,000 sq. ft. in gross floor area and to permit the extension of a non-conforming structure or use (30-21)(b). (The structure is non-conforming with respect to setback at the parking garage and the building's height at Bloomingdales.) For the signs, special permit relief is sought in the form of a waiver on the number and size of signs (30-20(l)).


The application goes into detail concerning how the standards for special permit relief are met in this instance. I encourage each of you to review that narrative in the event you harbor any hesitation

on voting to approve relief for this project. Otherwise, we are only talking about a 131 sq. ft. vestibule in the area of previously permitted patio space and two additional secondary signs—a 4.25 sq.ft. sign that serves as a directory for pedestrians on the Rte. 9 façade, and a 97 sq. ft. sign that identifies the restaurant on the entirely separate, Hammond Pond Parkway façade, that faces a different point of entry for the mall. This building is a bold, concrete façade, set back almost 100 feet from Rte. 9; it is a deserving and appropriate site for the refurbishment and signage proposed here.

While I do not wish to overstep my bounds, in the name of advocacy and efficiency, I'm compelled to request that, given the simplicity of the proposal and the strict construction timetables for both the Cheesecake Factory and Simon, any working session on this matter be held immediately after the public hearing and a vote be taken on Tuesday, June 11, 2013 to recommend approval to the full Board of Aldermen at its next regularly scheduled meeting on June 17, 2013.

As always, if you have any questions or concerns, I'm happy to discuss (cell phone 617-913-1003). Alternatively, you are welcome to email your questions to bshaevel@shaevelkreams.com and I will incorporate a response into my presentation on Tuesday evening. I look forward to appearing before you again.

Best regards,

William H Shaevel 

William H. Shaevel

cc: Ms. Linda Finucane, Assistant Clerk of the Board of Aldermen
Alexandra Ananth, Chief City Planner
Bill Jackson
Brian Jenkins
Joe Avotins