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James Freas
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ZONING REVIEW MEMORANDUM

Date: November 24, 2014

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Alexandra Ananth, Chief Planner for Current Planning

Cc: Thomas Enselek, Yogurt Beach, applicant
James Freas, Acting Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: **Request to change from a nonconforming retail use to a nonconforming restaurant use, and for a waiver from four parking stalls to add 27 seats**

Applicant: Tom Enselek, Yogurt Beach	
Site: 665 Watertown Street	SBL: 21023 0001
Zoning: MR1	Lot Area: 6,839 square feet
Current use: Frozen yogurt shop	Proposed use: Restaurant with 17 indoor seats, 10 outdoor seats

BACKGROUND:

The property at 665 Watertown Street consists of a 6,839 square foot lot improved with a frozen yogurt shop which opened in May 2014 with a legal building permit requiring that the establishment have no seating. Located in a Multi-Residence 1 district, building permits on file indicate that there has been a commercial use on the site since as early as 1904, when it was used as a store. Prior to the current use as the frozen yogurt shop, the site was a convenience store.

The yogurt shop currently operates with no seats as a retail establishment. The applicant is proposing to expand his business by adding 17 indoor seats and ten outdoor seats, for a total of 27 seats, creating a restaurant use. As the site is located in an MR1 district, non-residential uses are not allowed. However, as the previous use of the site was as a retail store, the change to a restaurant use may be permitted by special permit as a change from one nonconforming use to another. The addition of seats for the restaurant requires a waiver from the parking provisions for the number of stalls required.

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

- Zoning Review Application, prepared by Thomas Enselek, applicant, dated 10/14/2014
- Certified Plot Plan, signed and stamped by Curt A. Nunes, surveyor, dated 6/9/2014
- As-built plan with seating, floor plan, prepared by Mark S. Lewis Architectural Design, dated 7/22/2014
- As-built plan with seating, site plan, prepared by Mark S. Lewis Architectural Design, dated 7/22/2014

ADMINISTRATIVE DETERMINATIONS:

1. The site is located in a Multi-Residence 1 district. The previous use of the site was as a retail store. The applicant opened the shop with no seats as a retail establishment selling frozen yogurt, and would now like to add 27 seats. The addition of the seats changes the use to a restaurant use, which is also not allowed in an MR1 district. To change from one nonconforming use to another requires a special permit per Section 30-21(b).
2. The property has a parking credit of six stalls from the previous use. The addition of 27 seats changes the yogurt shop from a retail use to a restaurant use. A restaurant use requires one stall for each three seats and one stall per each employee at the busiest shift per Section 30-19(d)(13). Utilizing the formula of $A-B+C$ =the required number of stalls, where A is the number of stalls required for the proposed use (10), B is the number required for the previous use (6), and C is the number of stalls available (0), the number of stalls required for the proposed restaurant use is four. Per section 30-19(c)(2), the applicant requires a special permit to waive four stalls.
3. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
§30-21(b)	Request to change from a nonconforming retail use to a nonconforming restaurant use	S.P. per §30-24
§30-19(d)(13) §30-19(m)	Parking waiver for 4 parking stalls	S.P. per §30-24