



Setti D. Warren  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

James Freas  
Acting Director

## ZONING REVIEW MEMORANDUM

Date: October 30, 2014

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Alan Schlesinger, attorney representing applicant  
James Freas, Acting Director of Planning and Development  
Ouida Young, Associate City Solicitor

RE: Request to allow laboratory use and restaurants with more than 50 seats in a mixed use building

Applicant: Atrium Wellness Center, LLC	
Site: 300 Boylston Street	SBL: 82002 0001
Zoning: BU1	Lot Area: 125,771 square feet
Current use: Vacant – formerly mixed use shopping center	Proposed use: Mixed Use

### Background:

The subject property consists of 125,771 square feet and is currently improved with a structure formerly known as The Atrium Mall, a mixed use shopping center with underground parking. The property was developed by right in 1986 for retail purposes. A 1988 amendment to the Zoning Ordinance changed the dimensional requirements for the district and rendered the structure nonconforming due to height and setbacks. The building has approximately 260,500 square feet of tenant space, with common areas and several levels of underground parking.

The property has been the subject of several special permits since 1986. Board Order # 303-90(3) approved a free-standing sign. Board Order # 466-94 allowed for a restaurant with more than 50 seats (322 seats were permitted) and serving alcohol after 11:30PM, to waive 72 parking stalls, to create

larger entrance and exit drives and for a change of use in a nonconforming building. Board Order # 176-98 and 176-98(2) permitted an additional 224 restaurant seats and alcohol service after 11:30PM. These board orders reference the previous mall use and layout. The applicant is requesting new special permits for the repurposed property, so as to reflect the proposed uses and layout.

The applicant now proposes to repurpose the building into a mixed-use facility including medical office, laboratory, general office, retail and restaurant uses. In the Business 1 district, most of these uses are by right. However, a restaurant with more than 50 seats, and a laboratory, requires special permits. The applicant proposes up to 25,000 square feet of restaurant space with 332 seats in total, and approximately 100,000 square feet of laboratory space.

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

- Zoning Review Application, prepared by Alan Schlesinger, attorney, dated 9/19/2014
- Parking calculation
- Letter from Eve Tapper, dated 3/22/2010
- Land Title Survey, prepared by R.E. Cameron & Associates, dated 3/28/2012

#### **ADMINISTRATIVE DETERMINATIONS:**

---

1. The subject property is located in the BU1 district. The proposed uses of general office, medical office, and retail are allowed by right.
2. The applicant proposes approximately 25,000 square feet designated for restaurant uses with a total of 332 seats. Section 30-11(d)(9) requires a special permit for restaurants with more than 50 seats. While Board Orders # 176-98 and 176-98(2), and #466-94 granted special permits to allow for a restaurant with more than 50 seats, the permits were granted for the specific restaurant proposed at the time, and not restaurants in general. Further, the proposed building plans are no longer consistent with those approved in previous special permits. A special permit is required for the proposed restaurant use.
3. Approximately 100,000 square feet has been designated for laboratory use. Per section 30-11(b)(3), a special permit is required for a laboratory use in the BU1 district.
4. The property is located in the BU1 zone and must comply with the dimensional standards of Section 30-15, Table 3. A 1988 zoning amendment rendered the existing structure legally nonconforming with regard to height and setbacks.
5. There currently exist 1,106 parking stalls within the underground parking garage. The proposed uses require a total of 902 parking stalls, based on the square footages of each use and the projected number of employees per the requirements of Section 30-19(d). There is an excess of 204 parking stalls, therefore no action is required by the Board.

<i>Use</i>	<i>Assumed Gross Floor Area</i>	<i>Number of Employees At Highest Shift</i>	<i>Number of Stalls Required</i>
Retail	25,000 sf	27	93
Medical Office	60,000 sf	30 (in lab or pharmacy)	310
Office	50,500 sf	N/A	172
Restaurant	25,000 sf/ 332 seats	48	127
Laboratory	100,000 sf	400	200
<b>Total</b>	<b>260,500 sf</b>	<b>505</b>	<b>902 (1,106 available)</b>

6. See “Zoning Relief Summary” below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>	<i>Zoning</i>	<i>Action Required</i>
§30-11(d)(9)	Allow restaurants with greater than fifty seats	S.P. per §30-24
§30-11(b)(3)	Allow laboratory use	S.P. per §30-24