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Candace Havens
Director

ZONING REVIEW MEMORANDUM

Date: June 17, 2013

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Alan Schlessinger, Attorney for the applicant
Candace Havens, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to extend a nonconforming use.

RECEIVED
Newton City Clerk
2013 JUN 27 AM 11:39
DAVID A. OLSON, CMC
NEWTON, MA 02459

Applicant: Marc Kaplan, Needham Chestnut Realty LLC	
Site: 170 Needham Street	SBL: 83 28 2
Zoning: MU1	Lot Area: 24,422 square feet
Current use: Retail/office	Proposed use: Retail/restaurant

BACKGROUND:

The property at 170 Needham Street consists of a 24,422 square foot lot improved with a 14,084 square foot commercial building built in 1952 and a surface parking area. Originally office/industrial use, the property was used from 1970 to about 2002 as "Salett's Meat Market", a nonconforming retail use, and from 2002 on it has been used for retail, storage and office use. The applicants propose to raze the existing building and build a 7,140 square foot single story building containing restaurant and retail uses.

Prior to 1987 the property was zoned as Manufacturing. At the time, retail, office and storage uses were allowed as a matter of right and there was no minimum lot size in the Manufacturing District. The retail and storage uses became nonconforming in 1987 after the adoption of the Mixed Use zoning district. The lot area requirement increased to 40,000 square feet, thus making the 24,422 square foot lot nonconforming as well.

A special permit (BO #1093-70) was issued in 1971 permitting a free-standing sign on-site. This special permit was amended in 2003 to allow for updates to the sign.

A variance (BO 63-87) in 1987 allowed relief from the front setback requirement from Jaconet Street to locate housing for an additional freezer five feet from the lot line.

Finally, a special permit was granted to the prior owner of the property in 2000 allowing for the extension of the nonconforming use and parking to permit construction of a new retail building. The special permit was never exercised and expired. The property was then sold to the current owner and is being used partially as retail, partially as office and partially as storage for an audio visual store.

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

- Zoning Review Application, prepared Alan Schlesinger, Attorney, dated 5/15/13
- Land Court Plan 37224, dated as of 1/6/71, creating the lot
- Building Permit, dated 1/2/1952
- Transfer Certificate of Title, dated 2/14/13
- City of Newton Board Order #1093-70, dated 1/18/1971
- City of Newton Board Order #63-87, filed 2/18/1988
- City of Newton Board Order #167-00, dated 6/19/00
- City of Newton Board Order #203-03, dated 7/14/03
- Average Grade Plane Calculation Worksheet, prepared by Hilde Karpawich, Kelly Engineering Group, Inc, dated 5/13/13
- Engineering Plans
 - Existing Conditions Plan, signed and stamped by Steven M Horsfall, dated 5/13/13
 - Layout Plan, signed and stamped by David Noel Kelly, dated 5/13/13
- Architectural Plans, signed and stamped by Hans Strauch, dated 5/13/13
 - Schematic Floor Plan
 - Needham Street Elevation
 - Jaconet Street Elevation
 - Side Elevation
 - Parking Lot Elevation
- Signage Plans
 - Floor Plan
 - Needham Street Elevation
 - Jaconet Street Elevation
 - Side Elevation
 - Parking Lot Elevation

ADMINISTRATIVE DETERMINATIONS:

1. The applicant is proposing retail and restaurant use for the new building. According to Section 30-13(b)(1), a special permit is required to locate retail in the Mixed Use District, and a special permit is required for a restaurant use per 30-13(b)(5).
2. The lot has 27,178 square feet in a district where 40,000 square feet is required, and is therefore nonconforming. Section 30-21(b) allows the reconstruction of a nonconforming structure by special permit.
3. The applicant proposes to dedicate 5,000 square feet to a retail use and the remaining area will be dedicated to a restaurant use. Currently, the existing retail, office and storage uses on site require

48 parking stalls per Section 30-19 of the Ordinance, however 23 are physically available. Utilizing the formula found in Section 30-19(c)(2) of A-B+C

$$A \text{ (number of off-street stalls required for proposed use - 39) - B (number of stalls required by previous use - 48) + C (number of stalls located on premises - 23) = 14 spaces required}$$

The applicant is proposing to construct 33 parking stalls on site, therefore no parking waiver is required.

4. The applicant is proposing 23.5 foot aisle widths, where 24 feet is required per Section 30-19(h)(3) for 90 degree parking. A special permit is required to waive the minimum aisle width requirement.
5. The applicant is seeking a special permit to waive the requirements for lighting per Section 30-19(j) and the loading dock requirement per Section 30-19(l).
6. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
§30-13(b)(1)	To allow retail use in the Mixed Use 1 District	S.P. per §30-24
§30-13(b)(5)	To allow restaurant use in the Mixed Use 1 District	S.P. per §30-24
§30-21(b)	To allow for the reconstruction of a nonconforming structure	S.P. per §30-24
§30-19(h)(3)	To waive the minimum aisle width requirement	S.P. per §30-24
§30-19(j)(1)	To waive certain lighting requirements	S.P. per §30-24
§30-19(l)	To waive the requirement for a loading dock	S.P. per §30-24
§30-19(m)	To waive any other dimensional, landscaping, fencing or other requirements with which plans do not comply	S.P. per §30-24