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#18-98(2)

CITY OF NEWTON ✓

IN BOARD OF ALDERMEN

March 1, 2010

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 AMENDMENT to SPECIAL PERMIT #18-98 to increase the number of seats from 65 to 88 and to permit accessory parking on an off-site lot, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman Ted Hess-Mahan. The Board finds that:

1. Literal compliance with the parking requirements is impractical and that permission for accessory parking for employees on a residential lot (Newton Community Service Center located at 492 Waltham Street) is in the public interest as it will offset the number of additional parking stalls required by the expanded use and will free up parking spaces in the existing parking lot located to the rear of the site for customers.
2. The accessory parking facility is not farther than 150 feet from the boundary line of a business district and is within 500 feet of the lot on which the restaurant use is located. The facility for which this permit is requested is to be used solely for the parking of passenger automobiles accessory to a restaurant use which is lawfully established in said business district. Such parking facility will not be used for sales, repair work or servicing of any kind, and no advertising sign or material is to be located on such lot.
3. The specific site, close to multiple destinations for customers, is an appropriate location for the expanded 88-seat restaurant (after 5:30 p.m.) as the restaurant is an amenity to the surrounding community and will increase the vitality of the West Newton BU-1 zoned commercial district without adverse affects on parking, traffic, and circulation.
4. The expansion and additional seats at the restaurant will not adversely affect the neighborhood because the restaurant has a lease agreement dedicating up to 21 parking spaces for exclusive restaurant use after 5:30 p.m. in the parking lot located to the rear of the site and a lease agreement dedicating up to five parking spaces for the exclusive use of restaurant employees at a parking lot located at

10 MAR -3 PM 2:24
CITY CLERK
NEWTON, MA. 02159

PROPERTY: 1293-1297 WASHINGTON ST., NEWTON.
TITLE REFERENCE: BK 19835, PG 515

Rosenberg
246 Walnut St.
Newton, MA

A True Copy

City Clerk of Newton, Mass.

Newton Community Services Center, 492 Waltham Street, Newton after 6:00 p.m., which is approximately 200 feet from the site and will free up spaces located in the parking lot located to the rear of the site for use by customers..

5. This special permit will retain an existing use on the site.
6. The sharing of parking spaced at different times of day by different users is consistent with and encouraged by the *Comprehensive Plan*.

PETITION NUMBER: #18-98(2)

PETITIONER: Restaurant Arts, Inc./Kenmore Realty Corporation

LOCATION: 1293-1297 Washington Street, Section 33, Block 11, Lot 13 containing approximately 12,047 sq. ft. of land

OWNER: Kenmore Realty Corporation

ADDRESS OF OWNER: 1355 Washington Street, W. Newton, MA 02465

TO BE USED FOR: A restaurant, which also serves alcohol, with up to 88 seats after 5:30 p.m.; 32 seats may be used before 5:30 p.m.

CONSTRUCTION: Interior renovations and façade changes

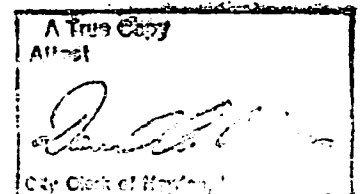
EXPLANATORY NOTES: §30-11(d)(9) and amendment to Special Permit No. 18-98 to expand a restaurant with more than 50 seats in a BU-1 zone; §30-19(f)(3) for approval of accessory parking on a residential lot; §30-23 for site plan approval; and §30-24(d) for special permit approval

ZONING: Business 1 District

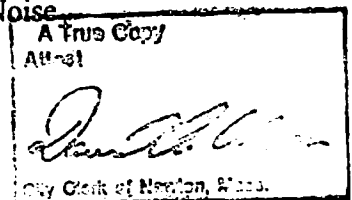
Note: This special permit supersedes prior special permit #18-98 and consolidates and incorporates herein those conditions and provisions from the prior special permit that remain applicable, are still in full force and effect, and are set forth in this special permit.

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:



- "Site Plan of Land, Newton, MA to Accompany the Petition of Michael Leviton, Lumiere Restaurant," dated 11/19/09, signed and stamped by John R. Hamel, Professional Land Surveyor on 11/24/09.
 - Architectural sketch of existing space and new seating, dated July 28, 2009, signed and stamped by Hobart Fairbanks, Registered Architect.
2. That the Petitioner shall provide a copy of the signed lease agreement dedicating up to five parking spaces for exclusive restaurant use after 6 p.m. at the Newton Community Services Center parking lot located at 492 Waltham Street, Newton.
 3. That the Petitioner shall limit parking in the Newton Community Services Center parking lot located at 492 Waltham Street, Newton, to employees of the restaurant only.
 4. Should the Petitioner lose the ability to lease five parking spaces from Newton Community Service Center at 492 Waltham Street, Newton, the petitioner must replace such stalls with a suitable, equivalent alternative subject to the approval of the Commissioner of the Inspectional Services Department and the Director of Planning and Development. The Petitioner shall have up to sixty days from the termination of the lease of said parking spaces to propose a suitable, equivalent alternative or forfeit the additional 23 restaurant seats until such parking can be procured. Pending the location of suitable, equivalent alternative parking spaces and the approval from the Commissioner of the Inspectional Services Department and the Director of Planning and Development the Petitioner may continue to use the additional 23 seats as approved herein.
 5. The petitioner shall promote the availability of parking spaces in the parking lot located to the rear of the site at the front desk of the restaurant, and on the restaurant's website and telephone greeting message.
 6. The petitioner shall be allowed a maximum of 88 seats after 5:30 p.m. and a maximum of 32 seats before 5:30 p.m.
 7. All of the existing dumpsters shall be enclosed with a solid wood fence to screen them from the surrounding parking areas.
 8. The existing delivery area shall be clearly marked on the pavement next to the rear loading dock and that signage be maintained to keep an area clear for deliveries.
 9. The petitioner shall use best efforts to recycle all materials used in connection with the restaurant.
 10. Trash is picked up only between 7 a.m. and 6 p.m. Monday through Saturday, and trash removal shall meet all the requirements of the City of Newton Noise Ordinance.



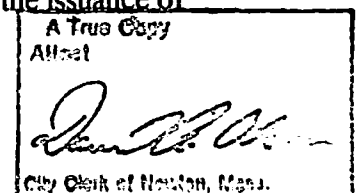
11. The petitioner shall not enter into an agreement with the owner of 515 Waltham Street to use that site for parking.
12. The petitioner shall submit a check to the City of Newton in the amount of \$1,200 to cover the cost of procurement and installation of two street trees and \$400 for the purchase and installation of bike racks in the West Newton area.
13. To the extent allowed by the City of Newton Department of Public Works, the petitioner shall install planters with flowering plants on the sidewalk in front of the exterior windows of the restaurant.
14. The facades treatment of the expanded restaurant area shall be consistent with the treatments of the facades of the existing restaurant space in order to show that the space inside is occupied for one integrated use.
15. No building permit shall be issued pursuant to this special permit/site plan approval until the petitioner has:
 - a. 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.
 - b. filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Submitted a check to the City of Newton in the amount of \$1,200 to cover the cost of procurement and installation of two street trees and \$400 for the purchase and installation of bike racks in the West Newton area.
16. The portion of the building subject to this special permit/site plan approval located at 1297 Washington Street, Newton, shall not be occupied until the petitioner has filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or registered engineer certifying compliance with Condition #1. *Note: pending and during construction of the portion of the expanded restaurant as approved by this special permit, Petitioner may continue to occupy and operate the restaurant at the existing location with up to a maximum of 65 seats for dinner service and 32 seats for lunch service as provided in the prior special permit #18-98.*

Under Suspension of Rules

Readings Waived and Approved

20 yeas 0 nays 4 absent (Aldermen Albright, Ciccone, Harney, and Salvucci)

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 3, 2010. 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:



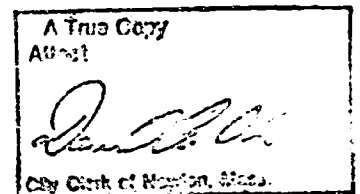
(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

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 3/3 and that NO APPEAL to said decision pursuant to M.G.Laws Chapter 40, Section 17 has been filed thereto.

ATTEST:



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



ROSENBERG, FREEDMAN & GOLDSTEIN *LLP*
246 WALNUT STREET
NEWTON, MA 02460