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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: October 13, 2016
Land Use Action Date: December 18, 2016
Board of Aldermen Action Date: January 9, 2017
90-Day Expiration Date: January 11, 2017

DATE: October 7, 2016

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning
Neil Cronin, Senior Planner

SUBJECT: **Petition #290-16**, a SPECIAL PERMIT/SITE PLAN APPROVAL to amend Board Order #191-81(B), further extend a nonconforming use, allow a sign in excess of 100 square feet, and allow a secondary wall sign on the same wall as the principal sign at **47 Crescent Street/77 Rowe Street**, Ward 4, Auburndale, on land known as SBL 44, 23, 16A and SBL 44, 23, 16(B) containing approximately 137,922 sf of land currently zoned Business 2 district. Ref: Sec. 7.3, 7.4, 7.8.2.C.2, 5.2.8, 5.2.13.A, 5.2.3, and 7.3.3 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis which may be useful in the special permit decision making process of the City Council. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the City Council will want to consider in its discussion at a subsequent Public Hearing/Working Session.



47 Crescent Street

EXECUTIVE SUMMARY

The property at 47 Crescent Street (also known as 77 Rowe Street) consists of three lots totaling 137,922 square feet lot in a Business 2 zoning district (BU2). The site is improved with a 45,000 square foot building which contains offices, a baking facility, and a small retail bakery for Finagle A Bagel. Wholesale food processing is not allowed in the BU2 district, rendering all current uses legally nonconforming. The petitioner is proposing to expand the retail bakery to 49 seats; there is no change to the remaining uses on site. Although the retail bakery has operated as an accessory use for a number of years, this increase to 49 seats is no longer accessory and therefore requires a special permit as a further extension of a nonconforming use.

The Planning Department is not concerned with the expansion of the retail bakery onsite. The use is located in a commercial area and has existed onsite for a number of years. In addition, the plan requires no expansion of the existing structure, only an outdoor patio with seasonal seating. Lastly, the expansion will serve the immediate commercial uses as well as the surrounding residential neighborhood. For these reasons, the Planning Department believes the extension of a nonconforming use with respect to an increase of 35 restaurant seats will not be substantially more detrimental than the existing nonconforming use is to the neighborhood.

SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The proposed extension of a nonconforming use will not be substantially more detrimental than the existing nonconforming use to the neighborhood (§7.8.2.C.2).
- The specific site is an appropriate location for the increased retail use (§7.3.3.C.1).
- The proposed project as developed and operated will not adversely affect the neighborhood (§7.3.3.C.2).
- There will be no nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3).
- Access to the site over streets is appropriate for the types and number of vehicles involved (§7.3.3.C.4).

I. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The site is located at 47 Crescent Street also known as 77 Rowe Street. The property is unique in that it lies within a small commercial zone surrounded by residences and the MA Turnpike. The commercial uses range from manufacturing

and warehouse, while the residential uses are a mix of single, two-family and multifamily structures **(Attachments A and B)**.

B. Site

The site consists of three lots totaling 137,922 square feet and is the corporate headquarters as well as the manufacturing and distribution location for Finagle A Bagel. The subject property is improved with a 45,000 square foot mixed-use facility with office, manufacturing and retail uses. The petition proposes no changes to the site except to increase seating indoors and creating an outdoor patio which will contain seasonal seats for the expanded retail use.

The site is currently accessed by vehicles from Crescent and Rowe Streets. Crescent is a one-way residential street traveling from Webster Street into the site, while Rowe Street is a public way from Webster Street, but becomes a private way once in the commercial area. Crescent Street and the public end of Rowe Street have sidewalks on both sides (There are no sidewalks on Rowe Street in the commercial area).

II. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site will remain wholesale food processing (bagels), but with an enlarged retail use, and an accessory office use.

B. Building and Site Design

The proposed alterations involve constructing a patio and updated sidewalk on the south side of the Rowe Street frontage; no other changes are proposed. An ADA compliant ramp will be installed providing access to the patio.

C. Parking and Circulation

There are no changes to the parking or circulation onsite, as the parking demand can be met by the existing parking facility located immediately across Rowe Street on a lot owned by the petitioner; the lot contains 100 stalls. The Planning Department recommended the installation of a bike rack as it is expected that patrons of the expanded retail bakery may use multiple modes of transportation to access the site.

D. Landscape Screening

The petitioner is proposing to install a mix of grasses and small plantings in conjunction with the seasonal patio; staff believes this is an appropriate level for the site.

E. Lighting

There are no changes to the lighting onsite.

III. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum (**Attachment C**) provides an analysis of the proposal with regard to zoning. The petitioner is seeking the following reliefs:

- §7.8.2.C.2., to further extend a nonconforming use.
- In addition, the petitioner is seeking to amend a prior special permit establishing the uses onsite (**Attachment D**).
- Please note, the petitioner changed their plans regarding signage, therefore there is no relief sought for the sign package.

B. Engineering Review

No engineering review is required at this time. The Engineering Division of Public Works will review this project for conformance with the City of Newton Engineering Standards prior to the issuance of a building permit should this project be approved.

IV. PETITIONER'S RESPONSIBILITIES

At the Land Use Committee's Public Hearing or prior to being scheduled for a continued public hearing, the petitioner should be able to:

- Provided an updated site plan showing a bike rack.








ATTACHMENTS:

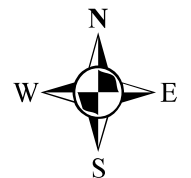
- Attachment A:** Zoning Map
- Attachment B:** Land Use Map
- Attachment C:** Zoning Review Memorandum
- Attachment D:** Recorded Order #191-81(B) and (C)
- Attachment E:** Draft Board Order

Attachment A Zoning Map Crescent St., 47

*City of Newton,
Massachusetts*

Legend

-  Single Residence 2
-  Single Residence 3
-  Multi-Residence 1
-  Multi-Residence 2
-  Business 2
-  Manufacturing
-  Public Use

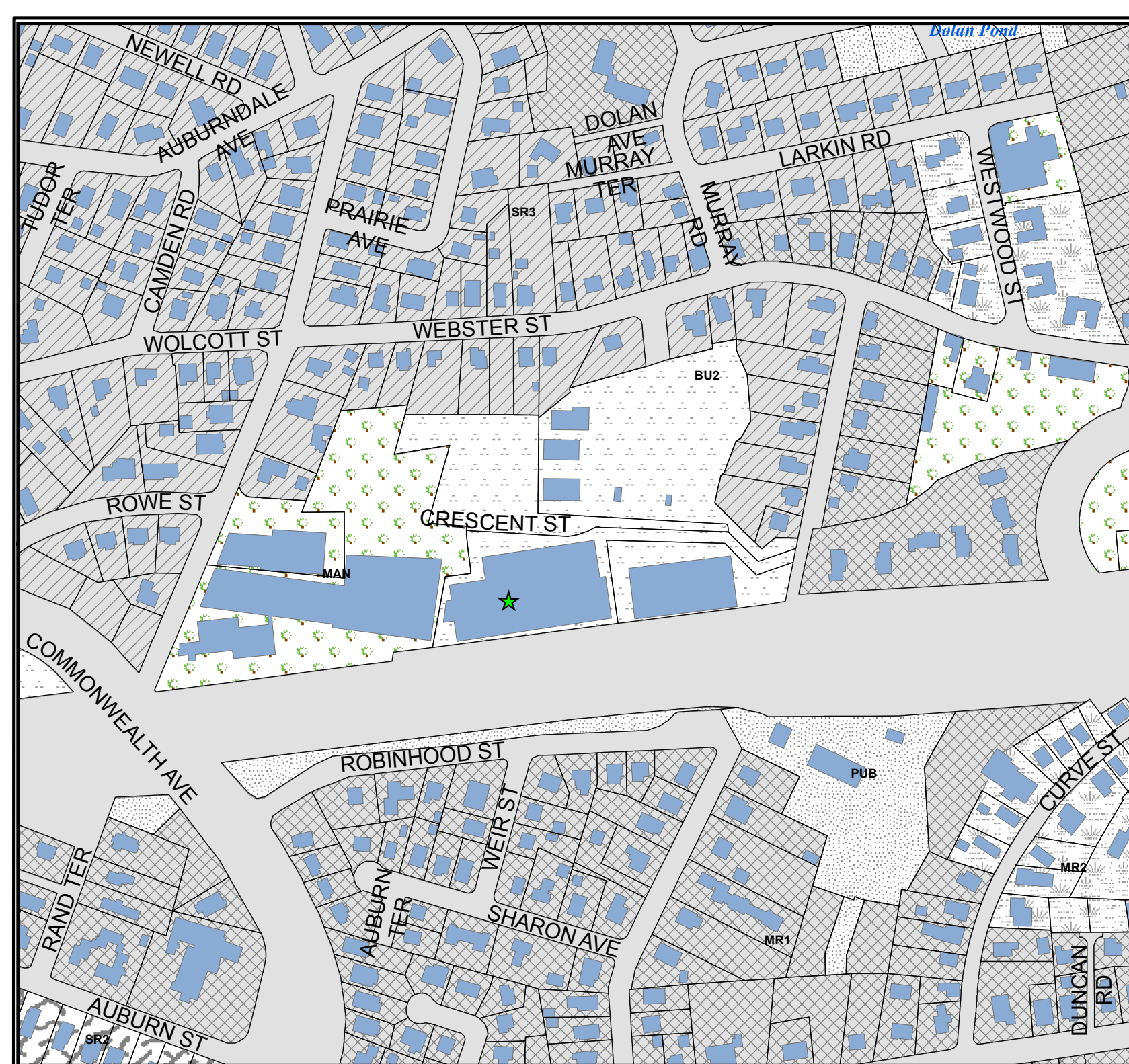


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield

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Map Date: September 26, 2016











Attachment B Land-Use Map Crescent St., 47

*City of Newton,
Massachusetts*

Legend

Land Use

Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Industrial
-  Open Space
-  Nonprofit Organizations
-  Vacant Land
-  Tax Exempt



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Barney S. Heath
Acting

ZONING REVIEW MEMORANDUM

Date: September 22, 2016

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Robert Allen, attorney
Newton-Fab, LLC
Barney S. Heath Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to modify existing special permit to increase bakery seating to 49 seats, to allow a principal wall sign in excess of 100 square feet and to allow a secondary wall sign on the same wall as the principal sign

Applicant: Newton Fab LLC	
Site: 47 Crescent St/ 77 Rowe St and 0 Crescent St	SBL: 44023 0016A, 44023 0016B
Zoning: BU2	Lot Area: 137,922 square feet
Current use: Manufacturing, office and bakery with 14 seats	Proposed use: Manufacturing, office and bakery with 49 seats

BACKGROUND:

The property at 47 Crescent Street (also known as 77 Rowe Street) consists of three lots totaling 137,922 square feet. The property is improved with a 45,000 square foot building which houses the offices, a baking facility and a small retail bakery for Finagle A Bagel. The building lot is separated from the parking area by Rowe Street, a private way. The applicant has operated a 14 seat bakery open to the public for several years, and wishes to expand to 49 seats, 40 indoors and nine outdoors. The uses in rest of the facility will not change.

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

- Zoning Review Application, prepared by Robert Allen, attorney, dated 5/5/2016
- Floor plans, signed and stamped by Alfred Wojciechowski, architect, dated 1/29/2015
- Architectural Drawings, prepared by Haverson Architecture and Design, architects, undated
- Parking Space Count, prepared by CBT Architects, dated 3/8/2016
- Sign specs, prepared by Andy Layman, Sign Art, undated

ADMINISTRATIVE DETERMINATIONS:

1. There has been a manufacturing use on site since at least 1981, when Special Permit #191-81(B) and (C) was issued to allow the extension of a nonconforming light manufacturing use and the accessory office use. Wholesale food processing is not allowed in the Business 2 zoning district, rendering the current use legally nonconforming. The applicant continues to use the property for processing of wholesale bagels for Finagle A Bagel, as well as its business offices. A 14-seat retail bakery has operated on site for several years as an accessory use to the main manufacturing and office uses. The applicant proposes to add 26 interior seats, and nine outdoor seats, creating a total of 49 restaurant seats. At the proposed scale, the 49-seat restaurant use is no longer accessory and is a further extension of the existing nonconforming light manufacturing use, requiring a special permit pursuant to Section 7.8.2.C.2.
2. There are 4 parking stalls available on site at 47 Crescent Street and an additional 100 at 77 Rowe Street for a total of 104 parking stalls, with an additional 10 stalls on the private way. The restaurant use requires one stall for every three seats plus one stall for every three employees per Section 5.1.4.A. With 49 seats and five employees, the proposed restaurant use requires 18 parking stalls.

An office use requires one parking stall for every 250 square feet. Office space makes up 7,519 square feet of the building, requiring 30 parking stalls.

The remaining 34,879 square feet of the structure is used for the production of bagels. A manufacturing use requires one stall for every 1,000 square feet plus one stall for every four employees, of which there are 45. The manufacturing portion of the building requires a total of 46 parking stalls.

In total, 94 parking stalls are required for the existing office, manufacturing and proposed restaurant uses. There are 104 stalls available, no waiver is required.

3. The applicant is proposing two wall signs for the property. The applicant proposes to replace an existing 99.66 square foot sign facing the MA Turnpike with a new sign proposed at 156 square feet, which exceeds the 100 square feet allowed in Section 5.2.8. A special permit per Section 5.2.13.A is required for the proposed 156 square foot sign.
4. The applicant is proposing a secondary wall sign of less than 50 square feet on the same wall as the principal wall sign. Sections 5.2.3 and 5.2.8 prohibits a secondary sign to be located on the same wall as the principal sign. A special permit per Section 5.2.13.A is required for the sign locations as proposed.

5. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
	Amend Special Permit #191-81(B)	
§7.8.2.C.2	To further extend an existing nonconforming use	S.P. per §7.3.3
§5.2.8 §5.2.13.A	For a sign to exceed 100 square feet	S.P. per §7.3.3
§5.2.3 §5.2.8 §5.2.13A	To locate a secondary wall sign on the same wall as the principal sign	S.P. per §7.3.3

CITY OF NEWTONIN BOARD OF ALDERMEN

June 15, 1981

ORDERED:

That the Board finding that the public convenience and welfare will be substantially served by its action 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, the following SPECIAL PERMIT is hereby granted, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefor through its Chairman, Alderman Terry Morris.

Petition number: 191-81(B), 191-81(C)

Petitioner: Robert C. Abbe, President, ADE Corp.

Location: Crescent Street (Rowe Street), Ward 4, Section 44, Block 23, Lot 16A, containing approximately 72,006 square feet, Lot 16B containing approximately 52,815 square feet and portions of Lots 10, 11, 12 and 13 containing approximately 12,670 square feet.
Total Area: 137,491 square feet.

Owner: ADE Corporation

Address of Owner: 77 Rowe Street, Newton, MA 02166 - Lots 16A and 16B
(See attached sheet for other owners)

To be used for: The assembly of premanufactured electronic components, accessory parking in a residential district.

Construction: Steel, masonry, asphalt.

Explanatory note: This SPECIAL PERMIT supersedes Board Order #259-79 dated July 9, 1979. Section 30-10(c)(2) of the Zoning Ordinance requires permission from the Board of Aldermen in order to utilize more than three thousand (3,000) square feet of floor area to be occupied by light manufacturing in a Business B District.

Section 30-21 of the Zoning Ordinance requires permission from the Board of Aldermen for accessory parking in residential districts.

Land referred to is in the Business B District and Residence C District.

Approved, subject to the following conditions:

1. That the existing building, proposed addition, driveways, maneuvering aisles, parking areas, lighting, landscaping, utilities and other site features shall be located consistent with plans entitled:

- o "Site Plan (lighting and landscaping) sheet A1, dated March 9, 1981
- o Site Plan (grading, drainage, utilities) sheet A1, dated March 9, 1981 and revised through April 21, 1981,

ADE CORPORATION ADDITION, Rowe Street, Newton, Mass.", by Black River Design 1384 Massachusetts Avenue, Cambridge, Mass., Ramon Hovseplan, submitted by the petitioner and filed herewith.

2. That the interior layout of the existing building and proposed addition shall be consistent with plans entitled "Floor Plan, Existing Building, A2 Floor Plan, Addition, A3," dated March 9, 1981 ADE Corporation Addition, Rowe Street, by Black River Design, submitted by the petitioner and filed herewith.
3. There shall be no exercise of this SPECIAL PERMIT until:
 - a. The petitioner shall have recorded with the Registry of Deeds for the Southern District of Middlesex County a certified copy of this Board Order granting this SPECIAL PERMIT with appropriate reference to the book and page of the recording of the petitioner's title deed or notice of lease endorsed thereon.
 - b. A certified copy of such recorded notice shall have been filed with the City Clerk, the Building Department and the Department of Planning and Development.
 - c. The petitioner shall have complied with all requirements of the Massachusetts State Building Code, including obtaining appropriate permits from the Building Department, and said Department shall have filed, with the City Clerk and the Department of Planning and Development, a statement certifying thereto.
4. That no part of the addition or parking area in the residence zoned district subject to this SPECIAL PERMIT shall be occupied until:
 - a. A statement by a registered engineer or registered architect shall have been filed with the City Clerk, Building Commissioner, City Engineer and Director of Planning and Development certifying full compliance with conditions 1 and 2 herein.
 - b. A statement by the Director of Planning and Development shall have been filed with the City Clerk, Building Commissioner and City Engineer approving of the final location, number, size and type of landscaping and final location, height and fixtures of site lighting.
 - c. A statement by the Building Department that there has been full compliance with the Massachusetts State Building Code, including any permits issued by said Department, and that the premises are suitable for occupancy shall have been filed with the City Clerk and the Department of Planning and Development.

#191-81(B)

#191-81(C)

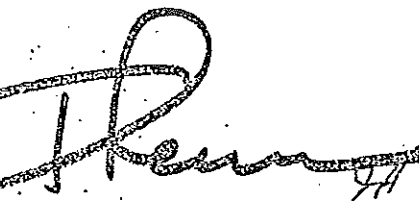
Page 3

Under Suspension of Rules
Readings Waived & Adopted
20 Yeas 2 Nays (Morris &
Bauckman) 2 Absent (Dietz &
McGrath)

EXECUTIVE DEPARTMENT


Approved June 17, 1981


(Sgd) EDWARD G. ENGLISH City Clerk

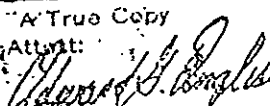

(Sgd) THEODORE D. MANN Mayor

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT is a true, accurate and complete copy of said decision; that all statutory requirements for the issuance of such SPECIAL PERMIT have been complied with; and that copies of the foregoing decision and all plans referred to in the decision have been filed with the Planning and Development Board and the City Clerk.

Twenty days have elapsed since the date of filing of the Board Order with the City Clerk and no appeal thereto has been filed.


City Clerk Edward G. English
July 6, 1981



A True Copy
Attest:

City Clerk of Newton, Mass.

CITY OF NEWTON
CITY COUNCIL

October 17, 2016

ORDERED:

That the Council, 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 SPECIAL PERMIT/SITE PLAN APPROVAL to allow for the expansion of a nonconforming retail use, and exceptions to the sign requirements as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

1. The extension of a nonconforming retail use will not be substantially more detrimental than the existing nonconforming use to the neighborhood because the use has existed at the site for many years and the parking demand can be met on site (§7.8.2.C.2.).
2. The specific site is an appropriate location for the proposed project, as the site is located in a business district, and will allow for an expanded retail service for the neighborhood (§7.3.3.C.1.).
3. The proposed project, as developed and operated, will not adversely affect the neighborhood, as there is sufficient parking on the site for the proposed expansion and the increase use will help serve the neighborhood (§7.3.3.C.2.).
4. There should be no nuisance or serious hazard to vehicles or pedestrians, as both streets providing access to the site have sidewalks. The petitioner will update the pedestrian sidewalk along the frontage of its property to improve pedestrian access and install an ADA compliant ramp providing access to the expanded retail use. Lastly, the petitioner will install a bike rack (§7.3.3.C.3.).
5. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4.).

PETITION NUMBER: #290-16

PETITIONER: Newton-FAB, LLC

LOCATION: 47 Crescent Street/77 Rowe Street on land known as Section 44, Block 23, Lot 16A, and Section 44, Block 23, Lot 16B containing approximately 137,922 square feet of land

OWNER: Alan Litchman

ADDRESS OF OWNER: 77 Rowe Street
Newton, MA 02466

TO BE USED FOR: Expansion of a nonconforming retail use

EXPLANATORY NOTES: §7.8.2.C.2 to allow an expansion of a nonconforming use;

ZONING: Business 2

Approved subject to the following conditions:

This special permit supersedes, consolidates, and restates provisions of prior special permits to the extent that those provisions remain applicable. Any conditions in prior special permits not set forth in this special permit are null and void.

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:
 - a. Site Plan, prepared, stamped and signed by David T. Faist, Professional Engineer, dated 10/30/2016.
 - b. Landscape Plan, prepared by Thomas Wirth Associates INC., Landscape Architects dated 3/21/2016.
2. 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 Order for the approved Special Permit/Site Plan Approval 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. Obtained a written statement from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1 and that the petitioner is in compliance with all relevant conditions of this Order.
3. No Final Inspection/Occupancy Permit for the use covered by this Special Permit/Site Plan Approval shall be issued until the petitioner has:

- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development, a statement by a registered architect or engineer certifying compliance with Condition #1.
- b. Submitted to the Department of Inspectional Services and the Department of Planning and Development, a final as-built survey plan in paper and digital format by a licensed surveyor.
- c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division certifying that the final site construction details have been constructed to the standards of the City of Newton Engineering Division.
- d. Installed a bike rack.