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Planning Department

MEMORANDUM

To: Board of Selectmen

Date: September 18, 2015

From: Kristen Guichard, AICP

Subject: Restaurant Use Special Permit #08/18/15—454 (Legend Cafe)

Location:	5A Spruce Street	Proposed Use:	Restaurant
Applicant:	Jingbo Li and David Hebert	Map/Parcel:	F2A-97
Property Owner:	Richard Presti	Hearing Date:	October 5, 2015
Previous Permits:	#08/17/92-337	Decision Date:	January 3, 2015
Zoning:	West Acton Village (WAV)		

Background

Ms. Jindou Li and Mr. David Hebert submitted a Use Special Permit Application for a 50 seat restaurant at 5A Spruce Street for Legend Cafe. This is the location of the former Spruce Street Cafe. Zoning Bylaw (ZBL) Section 3.5.5 requires a Use Special Permit for restaurants with more than 10 seats. There are no changes proposed for the building or the site layout.

Legend Café has opened with a limited number of 35 seats. Although there is no Use Special Permit on file for 35 seats, former restaurants in this location have been operating as such for a number of years. The Zoning Enforcement Officer determined that 35 seats is pre-existing non-conforming¹.

Comments

1. Parking:

The property owner has indicated there are 7 dedicated and 27 shared parking spaces on the north lot and a dedicated unmarked parking area between the café entry stairs and the edge of the ballet school egress stair on the south lot. In the south lot, vehicles are currently parked in front of the fire equipment access and limiting access to the handicap ramp at the ballet school. The Fire Department has requested that parking be eliminated in front of the fire access area with a minimum of a 3-foot wide access area. The Building Commission confirmed that the handicap parking space blocks the access ramp. Based on our calculations, 6 parking spaces could safely fit in this location which takes into account a “No Parking” area from the area in front of the handicap ramp at the ballet school and the Fire Department equipment on the building.

1. A special permit was obtained in 1992 for Phillips Coffee Emporium for a total of four (4) seats. Restaurants in this location have been operating with approximately 35 seats for over a decade. The 6 year statute of limitations under Massachusetts General Law Chapter 40A Section 7 has lapsed.

Legend Café is located in a mixed-use building and shares parking with abutting mixed-use properties. ZBL Section 6.3.1.10 requires restaurant uses to have a minimum of 1 parking space for each 3 seats. Therefore the total number of required parking spaces for a 50 seat restaurant is generally 17 spaces. Legend Café is in the WAV District and utilizes 'Collective Use Parking Lots'. There are special provisions for Collective Use Parking in the WAV District:

Section 6.9.4.4: The minimum number of required parking spaces shall be 50% of the requirements of Section 6.3.1.

Therefore, the required number of parking spaces required for a 50-seat restaurant at Legend Café is 8.5, rounded up to 9 parking spaces. Seeing as Legend Café is also part of a mixed-use building and shares parking with mixed uses, Bylaw Section 6.3.4 allows consideration for reduced parking where it can be demonstrated that the parking need for the uses occurs at different times. According to our calculations and the information provided by the applicant, the business' 13 dedicated parking spaces meets the requirements of the bylaw both under Section 6.9.4.4 and 6.3.4.

2. **Septic Limitations:**

In the spring of 2015, The Board of Health approved a total of 50 seats with the condition of reduced hours of operation (5 days/week or less). The current proposed hours of operation for Legend Café is Monday through Saturday 7AM-3PM and Sunday 7:30AM-2:30PM. The Applicant met again with the Health Department on September 14, 2015 to request an increase in seating. The Board of Health allowed for a total of 36 seats for their requested hours of operation. The Applicant may decide to come back to the Board of Health for additional seating after sufficient water usage data has been collected and reviewed.

Recommendation

The Planning Department believes there is sufficient parking available to accommodate a 50 seat restaurant. The Board of Health's condition currently limits 36 seats with the ability to review at a later date once additional water usage data has been collected. In all other respects the restaurant complies with the by-right requirements of the Bylaw. As a result, I have attached a draft decision for your consideration with a condition limiting the number of seats to the number allowed by the Board of Health. If the Board of Health allows for an increase in seating at a later date, this would help streamline the Applicant's permitting process. By wording the condition in this way, the Applicant would not have to come back to the Board for an amendment. To address the Fire and Building Department's concerns, we have included a condition to install a "No Parking" sign and striped area on the pavement to provide access to the Fire equipment and handicap ramp.

As with all Special Permits, the Board should determine if the applicant's request meets the criteria of Bylaw Section 10.3.5.