

**TOWN OF DEDHAM**  
**ZONING BOARD OF APPEALS**  
**26 BRYANT STREET, DEDHAM, MASSACHUSETTS 02026**



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PHONE 781-751-9242 • FAX 781-751-9225 • [swebster@dedham-ma.gov](mailto:swebster@dedham-ma.gov)

**DECISION**

**Applicant:** 50's Diner and R & R Realty Associates, LLC  
**Project Address:** 47 Legacy Boulevard, a/k/a 900 Providence Highway  
**Property Owner:** R & R Realty Associates, LLC  
**Case #:** VAR-06-12-1544  
**Map/Lot:** 149/13  
**Zoning District:** RDO

**Date of Application:** June 22, 2012  
**Date of Hearing:**  
**Members Present and Voting:** J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, Jason L. Mammone, P.E., JH Rumpp, AICP

**Applicant Representative:** Peter A. Zahka II, Esq.  
Barbra and Spero Deamantopoulos, owners of 50's Diner

**Petition:** To be allowed such Special Permits and/or variances as may be necessary for the alteration and extension of a pre-existing nonconforming use and structure (i.e., a diner) by adding approximately 2,000 square feet of floor area and increasing seating to 85 seats utilizing the existing parking at 900 Providence Highway

**Section of Zoning By-Law:** *Town of Dedham Zoning By-Law Sections 3.1.3, 3.3, 9.2, 9.3, Tables 1 and 3*

**Date of Filing with Town Clerk:** AUGUST 6, 2012

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held public hearings on Wednesday, July 18, 2012, in the Town Office Building, Bryant Street, Dedham, MA. Present were members of the ZBA, Acting Chairman J. Gregory Jacobsen, Scott Steeves, E. Patrick Maguire, AICP, and Jason L. Mammone, P.E. In the absence of Chairman James McGrail, Esq. Acting Chairman J. Gregory Jacobsen appointed Associate Member J.H. Rumpp, AICP to sit in his place. The hearings at this meeting of the ZBA were duly advertised in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:10 p.m., the Acting Chairman called for the hearing on the petition of 50's Diner, Inc, 47 Legacy Boulevard (a/k/a 900 Providence Highway), Dedham, MA, and R & R Realty Associates, LLC, 32 Tamarack Road, Westwood, MA, to be allowed such Special Permits and/or variances as may be necessary for the alteration and extension of a pre-existing nonconforming use and structure (i.e., a diner) by adding approximately 2,000 square feet of floor area and increasing seating to 81 seats utilizing the existing parking at 900 Providence Highway in the Research Development and Office (RDO) Zoning District. *Town of Dedham Zoning By-Law Sections 3.1.3, 3.3, 9.2, 9.3, and Table 1 and 3.*

The Applicant was represented by Peter A. Zahka, II, Esq., of 12 School Street, Dedham, MA. Also present on behalf of Applicant were Applicant's principals, Barbra and Spiro Deamantopoulos. The one-and-a-half page minutes from the hearing are the primary source of evidence and are incorporated herein by reference.

At the commencement of the hearing, the Applicant submitted a Parking Table Update, floor plans, and the parking plan approved by the Dedham Planning Board in 2008 for the Subject Property. The Applicant has operated a diner at the Subject Property since 1993, pursuant to a special permit issued by the Dedham Zoning Board (*see Dedham ZBA Decision No. 92-45*). At that time, the Subject Property was in the Limited Manufacturing (LM) Zoning District and a diner was allowed upon issuance of a special permit.

Subsequently, the Subject Property was re-zoned into the RDO Zoning District, and the Dedham Zoning By-Law does not currently allow such uses in this portion of the RDO Zoning District. As such, the diner is now considered a pre-existing nonconforming use.

Section 3.3.1 of the Dedham Zoning By-Law protects pre-existing nonconforming uses and allows them to continue despite zoning amendments which would otherwise preclude the same. In addition, pursuant to Dedham Zoning By-Law Sections 3.3.2 and 3.3.3, the Zoning Board of Appeals is authorized to award special permits for extensions of nonconforming uses and structures if "it determines that such . . . extension shall not be substantially more detrimental" than the existing nonconforming use or structure.

As shown on the floors plans submitted by the Applicant, the proposed expansion is all within the existing building (which is not being enlarged). The expansion will include a new office and storage areas for the diner, as well as an increase in seating to 81 seats. The Applicant states that at times (especially weekends) there is a line of customers waiting to be seated, and that the proposed expansion in seating capacity is an attempt to accommodate these existing customers. The Parking Table Update prepared by the Applicant indicates that the Subject Property with the Applicant's expansion requires 84 parking spaces. The approved parking plan for the Subject Property depicts 84 parking spaces. The Applicant has appeared before the Dedham Planning Board to discuss the proposed expansion, and the Planning Board has voted that no further parking or site plan review is required provided the seating capacity is limited to 81 seats. The Applicant has agreed to this limitation.

Charles and Celia Black of 2 Intervale Road appeared at the hearing and spoke in favor of the application. They both indicated that they have been long time customers of the diner and can attest to the lines of people waiting for seats. No one appeared at the hearing in opposition of the application.

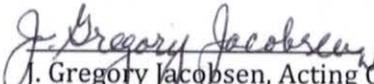
In acting upon requests for special permits, the ZBA must determine that the "adverse effects of the proposed use will not outweigh its beneficial impacts" after consideration of the six (6) enumerated factors set forth in Section 9.3 of the Dedham Zoning By-Law. For the reasons present above, the

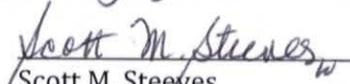
Applicant respectfully submits it satisfies the requirements and criteria for the issuance requirement of the requested special permits and variances.

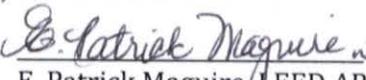
Upon motion being duly made by Mr. Maguire and seconded by Mr. Steeves, the ZBA voted unanimously (5-0) to grant the requested Special Permits as necessary for the alteration and extension of a pre-existing nonconforming use and structure (i.e., a diner) by adding approximately 2,000 square feet of floor area and increasing seating to 81 seats utilizing the existing parking at 900 Providence Highway/47 Legacy Boulevard in the Research Development and Office (RDO) Zoning District. In granting of said special permits, the ZBA finds that, after consideration of the criteria in Section 9.3.2 of the Dedham Zoning By-Law, the adverse effects of the Applicant's proposal will not outweigh its beneficial impacts on the Town and neighborhood. The ZBA also determines (as required by Sections 3.3.2 and 3.3.3 of the Dedham Zoning By-Law) that the proposed extension shall not be substantially more detrimental than the existing nonconforming use or structure

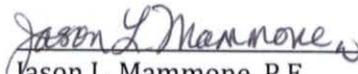
The Applicant is advised that, in accordance with MGL Chapter 40A, Section 11, no special permit shall take effect until a copy of this decision bearing the certification of the Dedham Town Clerk that twenty days have elapsed after the decision has been filed with the Dedham Town Clerk and no appeal has been filed or that an appeal has been filed within such time shall be recorded in the Norfolk County Registry of Deeds or the Land Registration Office of Norfolk County.

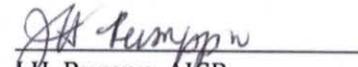
Dated: JULY 18, 2012

  
J. Gregory Jacobsen, Acting Chairman

  
Scott M. Steeves

  
E. Patrick Maguire, LEED AP

  
Jason L. Mammone, P.E.

  
J.H. Rumpp, AICP