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COMMONWEALTH OF MASSACHUSETTS
TOWN OF DEDHAM
ZONING BOARD OF APPEALS
DECISION

APPLICANT:	**Melsi Xhengo, 152 Washington Street, Weymouth, MA**
PROJECT ADDRESS:	**356-360 Bridge Street, Dedham, MA**
CASE #	**VAR-10-13-1749**
PROPERTY OWNER/ADDRESS:	Robert W. Simpson and Seconda L. Simpson
MAP/LOT AND ZONING DISTRICT:	55/42, General Business
DATE OF APPLICATION:	October 18, 2013
MEMBERS PRESENT AND VOTING:	James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, Jason L. Mammone, P.E., Jared F. Nokes, J.D.
PETITION:	The Applicant seeks a Special Permit to be allowed to demolish one building and to renovate the second building on the site to be used for a 25-seat dine-in and take-out pizza and sandwich shop, including preparation and service of other hot and cold foods such as roast beef, pasta, and seafood
SECTION OF ZONING BYLAW:	*Town of Dedham Zoning By-law Section 3, Table 1 Use Regulation, Section 5, Table 3 Dedham Parking Table*
REPRESENTATIVE:	George Berg, Trapani and Associates, 45 Washington Street, Weymouth, MA 02188 Melsi Xhengo, 152 Washington Street, Weymouth, MA 02188
DATE FILED WITH TOWN CLERK:	**JANUARY 14, 2014**

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts, held public hearings on Wednesday, November 20, 2013, in the Town Office Building, 26 Bryant Street, Dedham, MA. Present were members of the ZBA, James F. McGrail, Esq., Chairman, J. Grego-

ry Jacobsen, Vice Chairman, Scott M. Steeves, and Jason L. Mammone, P.E. In the absence of Member E. Patrick Maguire, LEED AP, the Chair appointed Associate Member Jared F. Nokes, J.D. to sit in his stead. The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:30 p.m., the Chairman called for the hearing on the petition of Melsi Xhengo (hereinafter referred to as the "Applicant"), 152 Washington Street, Weymouth, MA 02188. The minutes from the hearing are the primary source of evidence and are incorporated herein by reference.

The subject property is known and numbered as 356-360 Bridge Street, Dedham, MA and is shown on Dedham Assessors' Map 55, Lot 42. The certified plot plan indicates that the Subject Property contains 8,997 square feet of land and has 90 feet of frontage. According to the Dedham Zoning Map, the Subject Property is located in the General Business zoning district. Currently, the property is occupied by a two retail stores. According to the records maintained by the Dedham Board of Assessors, the dwellings were constructed in 1950.

The Applicant seeks to be allowed a Special Permit to be allowed to demolish one building and to renovate the second building on the site to be used for a 25-seat dine-in and take-out pizza and sandwich shop, including preparation and service of other hot and cold foods such as roast beef, pasta, and seafood. *Town of Dedham Zoning By-law Section 3, Table 1 Use Regulation, Section 5, Table 3 Dedham Parking Table*

There are two existing single story buildings on the site, one of which used to house a carpet store. The Applicant proposes demolition of one building and renovation of the other. The building to be demolished is has a full basement. The other building is a slab on grade with no basement. The site is bounded by residential and general business. The building to be renovated is +/- 1,980 square feet. There are presently six parking spaces that require backing out onto Bridge Street. There is a small driveway that leads to a loading area and access to the back of the building, but it was not used for parking in the past. The proposal is for a 25-seat dine-in/take-out roast beef/pizza shop. Because it requires a common victualler license from the Board of Selectmen, the use must be approved by the Zoning Board of Ap-

peals *(Town of Dedham Zoning Bylaw Section 3, Table 1.E.8).* The plan is to reconfigure the site with the demolition and create an off-street parking lot. Mr. Berg said they are also asking for a Special Permit for the parking based on the 25 seats and the square footage of the take-out, which requires just fewer than 18 spaces. Landscaping will be increased, and there will be an increase of approximately 1,000 square feet of pervious pavement.

Mr. McGrail noted that the Special Permit for the parking was not mentioned on the application and therefore not in the legal ad. He said that the ZBA can grant the petition for the use only. Mr. Berg apologized, saying it was on the petition statement instead. The Applicant will be meeting with the Planning Board for the parking, and he will be requesting a waiver from them.

Audience Comments

1. Lucille and Louise Carnivale, 27 Bingham Avenue, asked for an explanation of the petition. Mr. McGrail said the Applicant is before the ZBA for the demolition of one building and renovation of the second building for a dine-in restaurant, which is a use requiring Zoning Board of Appeals approval. A Special Permit is necessary to operate a take-out and dine-in facility, which requires a common victualler license from the Board of Selectmen. Before the common victualler license is approved, the Applicant is required to receive ZBA approval. Mrs. Carnivale was concerned because Bridge Street is dangerous, and because people may park on her street. Mr. Berg explained the parking configuration. Mr. McGrail said that closing the curb cut should improve safety, but that the Planning Board will review this with a traffic study. Mrs. Carnivale also felt that this restaurant is not necessary, but the Chairman said the Board does not look at it from a need perspective.
2. Joe Lavalley, 343 Bridge Street: Concerned about parking with take-out service, saying that this is a residential area. He asked if the Town could put in signage for no parking. Mr. Berg said that there is no parking on Bridge Street. Mr. Lavalley said he was more concerned with parking on Bow Avenue.
3. Louise Petrolini, 12 Bingham Avenue: Asked if alcohol would be served and where the dumpster would be. Mr. Berg said the dumpster will be on a concrete pad in the southeast corner of the site, and there will be no alcohol. Mrs. Petrolini was unhappy about the location of the dumpster because it would be right by her property.

Mr. McGrail recommended that the Applicant meet with the neighbors before the next meeting in December because there are legitimate concerns. Hopefully a resolution can be reached. The hearing was continued to December 18, 2013. This hearing ended at 7:49 p.m.

On Wednesday, December 18, 2013, the Applicant returned for a second meeting. Present at that meeting were James F. McGrail, Esq., Chairman, J. Gregory Jacobsen, Vice Chairman, Scott M. Steeves, and Jason L. Mammone, P.E. Because he was present for the previous hearing, Associate Member Jared F. Nokes, J.D. was again present in place of Member E. Patrick Maguire, LEED AP.

Mr. Berg had a productive impromptu meeting with the neighbors after the last meeting. Most questions related to traffic and the location of the dumpster. The Applicant has had a meeting with the Planning Board on December 5, 2013, at which time the meeting was continued pending tonight's Zoning Board of Appeals action. The Planning Board will require a more intensive review of the proposal, including addressing parking and signage. Mr. Berg also met with the Department Head team, and those comments are being addressed. As a reminder, Mr. McGrail said that the Applicant is before the Zoning Board of Appeals for a Special Permit for use.

Mr. Berg is requesting a waiver for parking. There are only 12 spaces on site, including a handicapped accessible space but the Zoning Bylaw requires 18. They are considering that. Mrs. Petrolini of 12 Bingham Avenue was concerned about the placement of the dumpster. The Applicant agreed to install a six-foot vinyl fence with a lockable gate around the dumpster, and has also agreed to install a six-foot vinyl secondary fence across the entire rear property line. Mr. McGrail said these will be put in his decision as conditions, which was fine with Mr. Berg.

Parking issues are being addressed. There are questions about "Right Turn Only," which has been taken into consideration by the Planning Board. Other concerns were about parking on the side streets. The Police Chief addressed that, and the neighbors have been directed to the Selectmen, who are the street commissioners. There are no permitted parking stickers,

so if a "No Parking" sign was installed, it would apply to everyone, including residents. The Planning Board is addressing this.

The Board had no questions for the Applicant. The audience was then asked to speak.

Lucille Carnivale, 27 Bingham Avenue: The Police and Fire Departments have suggested a "Right Turn Only" sign, but she is not sure how enforceable that would be. She is mostly concerned about safety issues. Mr. McGrail again said that the Zoning Board of Appeals is only addressing the use, dumpster, and fence, not the parking, signage, or traffic. These are issues for the Planning Board to address with its engineers. Mrs. Carnivale asked what would happen if the Planning Board denied the application. Mr. McGrail explained that theirs would be the final decision, and they could not open their restaurant. He said that the ZBA looks somewhat at safety, but defers to the Planning Board.

Joseph Lavalley, 343 Bridge Street: He agreed with Mr. McGrail, saying that the neighbors welcome it and the improvement to the site. However, the neighbors still have concerns. Mr. McGrail agreed, and said the Planning Board would address these. He said the Board deals with the use, i.e., dine in, take out. Mr. McGrail noted that this petition is an opportunity to improve the area, and the abutters should be happy. The Board can address some concerns, but ultimately, the petition must continue with the Planning Board.

Mr. McGrail said that he was inclined to approve the use with the condition that a six foot vinyl fence be installed along the east lot line, and a six foot vinyl, locked fence around the dumpster. He asked Mr. Berg if this was the only place for a dumpster, and he said it was the only place without eliminating additional parking. The dumpster will be emptied twice a week and, if need be, more frequently than that. The Board of Health will inspect twice a year. They also have an extermination plan as required by the Board of Health.

Mr. McGrail made a motion to allow the use, that a six food vinyl fence be installed along the rear lot line, and that a six foot vinyl fence with a lock be installed all the way around the dumpster. Mr. Steeves seconded the motion. The vote was unanimous at 5-0.

The Board was of the opinion that the Applicant meets the requirements of MGL Chapter 40A, Section 10, specifically that the Applicant would incur a hardship if the Special Permit was not granted. There is no detriment to the public good or derogation in the intent of purpose of the bylaw. In granting of said special permits, the ZBA finds that, after consideration of the criteria Dedham Zoning By-Law, the adverse effects of the Applicant's proposal will not outweigh its beneficial impacts on the Town and neighborhood and will not be substantially more detrimental to the neighborhood.

The Applicant is advised that, in accordance with MGL Chapter 40A, Section 11, a copy of this decision bearing the certification of the Dedham Town Clerk that twenty (20) days have elapsed after the decision has been filed with the Dedham Town Clerk and no appeal has been filed or that has been filed within such time shall be recorded in the Norfolk County Registry of Deeds or the Land Registration Office of Norfolk County. Applicant is further advised that no waivers/variance will be issued by the Building Department until evidence is presented that this decision has been recorded in the Norfolk County Registry of Deeds. The Applicant should furnish the Zoning Board of Appeals with a receipt from the Registry of Deeds indicating that the decision has been filed.

Dated: December 18, 2013

Attest, by the Zoning Board of Appeals:

James F. McGrail, Esq., Chairman

J. Gregory Jacobsen

Scott M. Steeves

Jason L. Mammone, P.E.

Jared F. Nokes, J.D.

Attest, by the Administrative Assistant:

Susan N. Webster

Copies of this decision are filed in the office of the Dedham Town Clerk. Copies of all plans referred to in this decision and a detailed record of the Zoning Board of Appeals proceedings are filed in the Dedham Planning/Zoning Department.

Materials Submitted:

- Zoning Board of Appeals application
- Petition statement prepared by George Berg
- Letter of permission from Robert W. Simpson
- Photograph of existing conditions
- Existing Conditions and Demolition Plan prepared by Prime Engineering, Inc., P.O. Box 1088, 350 Bedford Street, Lakeville, MA 02347