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TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS
DECISION

APPLICANT:	Joy Lee
PROJECT ADDRESS:	77 & 83 Washington Street, Dedham, MA
CASE #	VAR-02-14-1803
PROPERTY OWNER/ADDRESS:	Robert S. Carter et ux, Louise A. Carter, TE, 83 Washington Street, Dedham, MA
MAP/LOT AND ZONING DISTRICT:	77-20, Single Residence B
DATE OF APPLICATION:	February 22, 2014
MEMBERS PRESENT AND VOTING:	James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, Jason L. Mammone, P.E.
PETITION:	To be allowed such Special Permits and/or variances required for the demolition of an approximate 1,468 square foot restaurant/lounge building with a 72-seat capacity of and parking lot for the same (i.e., pre-existing nonconforming uses and structures), and for reconstruction of a new extended, altered, and changed restaurant/lounge building of not more than 2,200 square feet with not more than a 72-seat capacity which exceeds the volume and area of the original nonconforming structure and use, and is located other than on the original footprint to be served by a new parking lot with a minimum of 18 parking spaces
SECTION OF ZONING BYLAW:	<i>Town of Dedham Zoning Bylaw Sections 3.0, 3.3.2, 3.3.3, 3.3.7, 5.1.4, 9.2.2, 9.3, Tables 1 and 3</i>
REPRESENTATIVE:	Peter A. Zahka II, Esq. Joy Lee, proposed purchaser of property and owner/operator of Moko Japanese Cuisine in South Boston Matthew Smith, Norwood Engineering Co., Inc., project engineer

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held public hearings on Wednesday, March 25, 2014, in the Town Office Building, 26 Bryant Street, Dedham, MA. Present were members of the ZBA, Chairman James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, and Jason L. Mammone, P.E. The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:55 p.m., the Chairman called for the hearing on the petition of Joy Lee (hereinafter referred to as the "Applicant"), 674 East Broadway, South Boston, MA, to be allowed such special permits and/or variances required for the demolition of an approximate 1,468 square foot restaurant/lounge building with a 72-seat capacity and the parking lot for the same (i.e., pre-existing nonconforming uses and structures), and for the reconstruction of a new extended, altered, and changed restaurant/lounge building of not more than 2,200 square feet with not more than a 72-seat capacity, which exceeds the volume and area of the original nonconforming structure and use and is located other than on the original footprint to be served by a new parking lot with a minimum of 18 parking spaces at 77 and 83 Washington Street, Dedham, MA, in a Single Residence B (SRB) Zoning District. *Town of Dedham Zoning By-Law Sections 3.0, 3.3.2, 3.3.3, 3.3.7, 5.1.4, 9.2.2, 9.3, and Tables 1 and 2.*

The Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present at the hearing was Joy Lee, the Applicant, and Matthew Smith of Norwood Engineering, Inc., the project engineer. With the application, Attorney Zahka submitted various plot plans of the Subject Property. At the commencement of the hearing, Attorney Zahka distributed copies of the Dedham GIS Map as well as photographs of the Subject Property and existing buildings. 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 77 and 83 Washington Street, Dedham, MA, and is shown on Dedham Assessor's Map 77, Lot 20. The Subject Property contains approximately 19,528 square feet of land with over 200 feet of frontage on Washington Street

and with frontage on Lower East Street. According to the Zoning Map for the Town of Dedham, the Subject Property is located in the Single Residence B (SRB) Zoning District.

Currently located on the Subject Property are two buildings: a single family residential dwelling (which will remain) and the existing building occupied by the Oasis Lounge. According to records maintained by the Dedham Board of Assessors, the Oasis building was originally constructed in 1920. The Oasis is an approximate 1,500 square foot 1-story building. A restaurant/lounge has been operated out of this building for well over 42 years. (The current owners of the Oasis have been operating the same for 42 years and it was in existence prior thereto.) The Oasis is served by a non-striped parking lot in various stages of disrepair. There is very little landscaping or green space. There are existing curb cuts on both Washington Street and Lower East Street.

Ms. Lee has entered into an agreement to purchase the Subject Property and the Oasis (which are currently owned by Louise Carter). She proposes to demolish the existing Oasis building and to construct a new 2,011 square foot 1-story restaurant/lounge building in a different location on the Subject Property. The existing residential dwelling will remain. The proposed new building will satisfy the yard requirements for the SRB Zoning District. In addition, the Applicant proposes a new parking lot with 20 parking spaces to serve the Subject Property. The parking lot will have a major increase in landscaping including proper landscape buffers to the abutting residential neighbors.

The Applicant proposes to operate a 4-star 60-seat sushi restaurant from the new building. The Applicant indicates that the restaurant will be peaceful and quiet. There will be no lottery and no karaoke. The Applicant proposes to close the restaurant no later than midnight. The Applicant states that she is not interested in operating a "bar room".

Per Table 1 (Principal Use Table) of the Dedham Zoning By-Law, restaurant, lounges, and/or uses requiring a common victualler license are not allowed uses in the SRB Zoning District. Section 10 of the Dedham Zoning By-Law defines a "nonconforming building, structure or use" as "an existing legally established or erected building, structure, lot, or use which predates and does not conform to the current requirements of the district in which it

is situated as regards the size, dimensions, location, or use of building or land." Inasmuch as the structure and use at the Subject Property predate the Dedham Zoning By-Law prohibition, the same are considered as legal pre-existing nonconforming uses.

The Dedham Zoning By-Law authorizes and empowers the Zoning Board of Appeals (hereinafter "ZBA") to grant special permits to extend or enlarge non-conforming uses and non-conforming structures. Specifically, Sections 3.3.2, 3.3.3, and 3.3.7 of the Dedham Zoning By-Law provide that:

3.3.2 Nonconforming Uses. The Board of Appeals may award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

- a. Change or substantial extension of the use;
- b. Change from one nonconforming use to another, less detrimental, nonconforming use.

3.3.3 Nonconforming Structures. The Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

1. Reconstructed, extended or structurally changed;
2. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

3.3.7 Reconstruction after Catastrophe or Voluntary Demolition. A nonconforming structure may be reconstructed after a catastrophe or voluntary demolition in accordance with the following procedures.

1. Reconstruction of said structure shall commence within two years of such catastrophe or demolition.
2. Building(s) or structure(s) as reconstructed shall be located on the same footprint as the original nonconforming structure, and shall be only as great in volume or area as the original nonconforming structure.

3. In the event that proposed reconstruction would (a) cause the structure to exceed the volume or area of the original nonconforming structure or (b) cause the structure to be located other than on the original footprint, a special permit shall be required from the Board of Appeals prior to such demolition.

In acting upon requests for special permits, the ZBA is guided by Section 9.3.2 of the Dedham Zoning By-Law which provides that:

Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this By-Law, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment;
6. Potential fiscal impact, including impact on town services, tax base, and employment.

The Applicant submits that the above criteria for issuance of the requested Special Permits have been satisfied. The existing Oasis building and adjacent parking area are in need of significant repair and updating. The Applicant's new building and parking lot will improve the aesthetic appearance of the Subject Property and should benefit the entire area. In addition, the Applicant will improve traffic flow and safety by providing a new striped and landscaped parking lot (which is subject to review by the Dedham Planning Board). Appropriate landscape buffers will be provided to protect the abutting residential properties. The dumpster (now located next to residential properties) will be inside the building. The project will also be submitted to the Dedham Conservation Commission for a Stormwater Management Permit. The current Oasis Lounge operates primarily as a bar room with late closings, loud music, and karaoke. The Applicant proposes a full service sushi restaurant which will be quiet and peaceful restaurant. There will be no karaoke or lottery.

The Applicant proposes that the new restaurant building and existing dwelling be served by a parking lot with 20 parking spaces. Per Table 3 (Dedham Parking Table) of the Dedham Zoning By-Law, approximately 34 parking spaces would be required to serve the proposed new restaurant building and existing dwelling. Applicant has requested a variance to allow for a parking lot for such uses and structures with 20 parking spaces. Section 10 of Chapter 40A of the General Laws of Massachusetts provides that a Variance may be granted if:

Owing to circumstances relating to soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

The Applicant respectfully submits that the requirements for issuance of the requested variance have been satisfied. Simply stated, without the variance, the proposed renovations and upgrading of the Subject Property and the new restaurant building would be impossible. In addition, removal of the existing dwelling to allow for additional parking would be a severe financial hardship to the Applicant. The Applicant notes that approximately eight (8) parking spaces are required for "take-out" service. The Applicant indicates that she anticipates less than five (5%) of her business will be take-out and that she intends to provide delivery service.

The Applicant indicates that she has met with the abutting residential property owners and that the meeting was very positive and productive. The Applicant states that the abutting property owners appeared very supportive of the project. The Applicant noted that the abutters requested that the HVAC and similar equipment on the roof be located as far away from 63 Washington Street as possible.

Several residential abutters to the Subject Property appeared at the hearing and expressed their support for the project. A written letter with questions and a statement of support was submitted by Robert and Lynne Morris, 63 Washington Street, Unit 1, and James Spell-

man, 63 Washington Street, Unit 2. Each question in said letter was adequately responded to and addressed by the Applicant at the hearing.

Upon motion being duly made by Scott M. Steeves and seconded by J. Gregory Jacobsen, the ZBA voted unanimously (5-0) to grant such special permits and/or variances required for the demolition of an approximately 1,468 square foot restaurant/lounge building with a 72-seat capacity and the parking lot for the same (i.e., pre-existing nonconforming uses and structures), and for the reconstruction of a new extended, altered, and changed restaurant/lounge building of not more than 2,011 square feet with not more than a 60-seat capacity, which exceeds the volume and area of the original nonconforming structure and use, and is located other than on the original footprint to be served by a new parking lot with a minimum of 20 parking spaces at 77 and 83 Washington Street, Dedham, MA, in a Single Residence B (SRB) Zoning District. The aforesaid relief is granted on the following conditions:

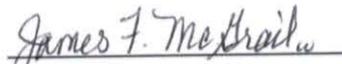
1. The new restaurant/lounge building will not have more than 2,011 square feet and a seating capacity of 60.
2. The new restaurant/lounge building will not exceed 20 feet in height.
3. Roof-top HVAC and similar mechanical equipment will be located as far from 63 Washington Street as possible.
4. The new restaurant/lounge will not provide karaoke.
5. Deliveries to the restaurant/lounge and dumpster removal will be restricted to between the hours of 9:00 a.m. – 5:00 p.m.
6. During the Planning Board Site Plan Review process, the Applicant will solicit and consider the input of the residential abutters relative to the type of landscaping and a possible fence in the landscape buffer.

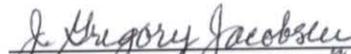
In granting of said special permit, the ZBA finds that, after consideration of the criteria in Section 9.3.2 of the Dedham Zoning By-Law, the adverse effects of the Applicant's proposal will not outweigh its beneficial impacts on the Town and neighborhood. In granting said variances, the ZBA finds that the Applicant has satisfied the requirements Section 10 of Chapter 40A of the General Laws of Massachusetts, to wit: a literal enforcement of the Dedham Zoning By-Law requirements would cause a substantial financial hardship to the Ap-

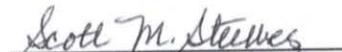
plicant, and that the relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Dedham Zoning By-Law.

The Applicant is advised that, in accordance with MGL Chapter 40A, Section 11, no variance 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 and that 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: March 25, 2014


James F. McGrail, Esq.


Gregory Jacobsen


Scott M. Steeves


E. Patrick Maguire, A/EED AP


Jason Mammone, P.E.

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:

- ZBA application
- Addendum to application
- Existing conditions plan prepared by Norwood Engineering Co., Inc., 1410 Route One, Norwood, MA 02062
- Site Layout plan prepared by Norwood Engineering Co., Inc.