

**ZONING BOARD OF APPEALS**

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ZBA 2009-10
Petition of Captain Marden's
279-285 Linden Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, March 5, 2009 at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of CAPTAIN MARDEN'S requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that enclosure of an existing porch that will increase a nonconforming Floor Area Ratio of .370 to .378, in a Business District at 279-285 LINDEN STREET, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

The Petitioner is requesting a Special Permit pursuant to the provisions of Section XXI and Section XXV of the Zoning Bylaw to provide two parking spaces that are required for the enclosed dining porch. The two parking spaces will be provided for employee parking in the State Street Lot, which is located more than 600 feet from the building.

On February 17, 2009 the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case the hearing were Chris Howe and Keith Marden, Jr. (the "Petitioner"). Mr. Howe said that the proposal is to enclose an existing outdoor eating area that is located at the front of the building. He said that the dining area has been there since the late 1980's.

Mr. Howe said that the enclosed dining area will be for three-season use. He said that said the porch will not be heated.

Mr. Howe said that enclosing the porch will increase the ground coverage and floor area of the building, which will change the Floor Area Ratio and parking requirements for the building. He said that there will be no increase in the seating capacity of the restaurant.

Mr. Howe said that the increase in floor area will be approximately 187 square feet. The Board said that the existing floor area is nonconforming. Mr. Howe said that the Building Inspector told them that since the building is already nonconforming, increasing the nonconformance would require a Special Permit.

The Board said that the State Street lot will not be available for approximately three years because of the High School project. Mr. Howe said that Captain Marden's has made other arrangements for parking during that time.

Mr. Marden said that they have made arrangements to lease some parking spaces at the Haskin's property. He said that there will be a written lease. The Board said that a copy of the lease should be submitted to the Board.

Mr. Howe said that, as the crow flies, the off-site parking will be less than 600 feet away from the building. He said that there is an existing arrangement for off-site parking in the State Street Lot. He said that the plan is to eventually revert back to the grandfathered parking arrangement. The Board said that a copy of the lease with the Town for the off-site parking spaces should be submitted.

There was no one present at the public hearing who wished to speak to the petition.

Statement of Facts

The subject property is located at 279-285 Linden Street, in a Business District.

The Petitioner is requesting a Special Permit/Finding that enclosure of an existing porch that will increase a nonconforming Floor Area Ratio of .370 to .378, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

The Petitioner is requesting a Special Permit to provide two parking spaces that are required for the enclosed dining porch. The two parking spaces will be provided for employee parking in the State Street Lot, which is located more than 600 feet from the building. Temporary employee parking will be provided in the Haskins Lot, which is less than 600 feet away from the building, while the State Street Lot is being used for the High School Project.

A Site Plan dated 8/8/08, stamped by John R. Hamel, Professional Land Surveyor, Existing and Proposed Floor Plans and Elevation Drawings, dated 1/16/09, prepared by D.W. Arthur Associates, and photographs were submitted.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject structure does not conform to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the finding of this Authority that although enclosure of an existing porch that will increase a nonconforming Floor Area Ratio of .370 to .378, such increase shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, for enclosure of an existing porch.

It is the opinion of this Authority that providing two parking spaces for employee parking in the State Street Lot and temporarily locating the employee parking spaces in the Haskins Lot for the duration of the High School Project is in harmony with the general intent and purpose of the Zoning Bylaw.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing, to allow for two parking spaces for employee parking in the State Street Lot and temporary employee parking spaces in the Haskins Lot for the duration of the High School Project, subject to the following condition:

1. A copy of the lease for the State Street Lot shall be submitted to the Board.
2. A copy of the lease for the Haskins Lot shall be submitted to the Board.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time stamped on this decision.

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APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.

Richard L. Seegel, Chairman

Cynthia S. Hibbard

David G. Sheffield

cc: Planning Board
Inspector of Buildings
lrm