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TOWN OF DEDHAM
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**ZONING BOARD OF APPEALS
DECISION**

Applicant: DAA Restaurant Group, LLC d/b/a La Taqueria
Project Address: 320 Washington Street, Dedham, MA
Applicant Representative: Peter A. Zahka, II, Esq., 12 School Street, Dedham
Legal Notice: The Applicant, DAA Restaurant Group, LLC, of 3 Hill Park Terrace, Randolph, MA 02368 seeks to be allowed such Special Permits as required for conducting, operating, and maintaining an approximate 1,100 sq. ft. restaurant (i.e., a use requiring a common victuallar permit) with seating for approximately ten (10) patrons utilizing the existing parking (8 spaces) for the entire building at 320 Washington Street.

Section of Zoning By-Law: *Town of Dedham Zoning By-Law Sections 9.2, 9.3, Table 1, Table 2, and Table 3(d).*

Zoning District, Map and Lot: District Central Business (CB); Map 93, Lot 118

Date of Public Hearing: September 18, 2019
Date of Decision: September 18, 2019
Vote: 5-0
Voting Members: Chairman James F. McGrail Esq., Scott Steeves, Gregory Jacobsen, Jason Mammone, and Sara Rosenthal

Date filed with Clerk: September 26, 2019

The Zoning Board of Appeals (“ZBA”) of the Town of Dedham, Massachusetts held public hearings on September 18, 2019, in the Town Office Building, Bryant Street, Dedham, MA. Present were Members of the ZBA, Chairman James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, Jason M. Mammone, P.E, and Sara Rosenthal. The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:25 p.m., the Chairman called for the hearing on the application of DAA Restaurant Group, LLC (hereinafter referred to as the “Applicant”). Applicant seeks to be allowed such special permits as required for conducting, operating, and maintaining an approximate 1,100 – 1,200 net square foot restaurant (i.e., a use requiring a common victuallar permit) with seating for approximately ten (10) patrons utilizing the existing parking (8 spaces) for the entire building at 320 Washington Street. The property is located in the Central Business (CB) Zoning District. *Town of Dedham Zoning By-Law Sections 9.2, 9.3, Table 1, Table 2, and Table 3(d).*

Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present on behalf of Applicant were Diana Gualdron and Alvin Pimentel, owners and operators of the proposed restaurant. Attorney Zahka had previously submitted a certified plot plan of the Subject Property, floor plans of the proposed restaurant, and photographs of the existing conditions. The transcript from the hearing is the primary source of evidence and is incorporated herein by reference. At the hearing Applicant were afforded an opportunity to make a full presentation.

Applicant is the lessee of the real estate known and numbered as 320 Washington Street, Dedham, Massachusetts, and shown on Dedham Assessors Map 93, Lot 118 (hereinafter referred to as the “Subject Property”). The Subject Property contains approximately 7,029 square feet with approximately 67 feet of frontage on Washington Street (and additional frontage on Providence Highway of approximately 129.94 feet). The Subject Property is located in the Central Business (CB) Zoning District.

The Subject Property is currently occupied by a single-story commercial building. The first floor of said building contains approximately 2,566 gross/2,400 net square feet of commercial space. The portion of the building being occupied by Applicant was formerly occupied by a Papa John's Pizza (which provided take-out service only). The other portion of the building is occupied by uBreakiFix, a tech repair shop. There are currently eight (8) parking spaces serving the building without room to accommodate additional parking.

Applicant proposes to conduct, operate, and maintain an approximate 1,200 square foot restaurant (i.e., a use requiring a common victualler permit) with seating for approximately ten (10) patrons utilizing the existing parking (8 spaces) for the entire building at 320 Washington Street. The restaurant will specialize in authentic Mexican foods. There will not be any tables in the restaurant. For convenience of patrons, however, Applicant proposes 10 "bar stools" along counters for on-site eating.

The proposed restaurant will require a common victualler license (for on-premises consumption of food and beverage). Pursuant to Line E.9. of Table 1 ("Use Regulation Table") of the Dedham Zoning By-Law, such uses are allowed in the CB Zoning District upon issuance of a special permit by the ZBA. Pursuant to Table 3 ("Dedham Parking Table") of the Dedham Zoning By-Law, the special permit may include modifications of the standard parking requirements based upon the specifics of each case. Applicant requests a special permit for its use and for a modification of the standard parking requirements to allow existing eight (8) parking spaces to continue to serve the entire building.

At the outset, it is important to distinguish between uses that are specifically prohibited under the Zoning By-Law and uses allowed by special permit. "Special permits facilitate flexible and sensitive administration of zoning controls by allowing a municipality to . . . [allow uses] on the basis of the facts and circumstances pertaining to specific sites and development proposals." *Massachusetts Zoning Manual* (MCLE), Chapter 8. Special permits govern the class of uses that lie between those that are prohibited and those allowed as of right. See, *Bobrowski, Massachusetts Land Use and Planning Law*, Section

9.01, p. 267 (2002). “The special permit power presupposes the allowance of certain uses, but only with the sanction of the local permit granting authority with the fairly flexible criteria of ‘in harmony with the general purpose of the ordinance’.” *Mendes v. Board of Appeals of Barnstable*, 28 Mass App. Ct. 527, 531, 552 N.E. 2d 604 (1990). (Compare to the variance that “presupposes the prohibition” of the relief sought and requires the showing of a “hardship”. *Id., Bobrowski*, at p. 268.) Instead of prohibiting establishments requiring a common victualler license in the CB Zoning District, the Town has opted to allow the same on a case-by-case basis through the special permit process and to allow the ZBA to modify the standard parking requirements based upon the specifics of each case.

Per said Table 3 (“Dedham Parking Table”) of the Dedham Zoning By-Law, retail businesses require 1 parking space per 200 nsf of floor area and eating establishments require 1 parking space per 250 nsf of floor area plus 2 parking spaces per 5 seats. Therefore, the existing uBreakiFix and the former Papa John’s required a total of 12 parking spaces¹. Currently, there are a total of eight (8) parking spaces provided at the Subject Property without any area for any additional spaces. Accordingly, relative to parking there is a pre-existing nonconformity. The uBreakiFix and the proposed restaurant would likewise require 12 parking spaces provided the restaurant is take-out only. As indicated, Applicant proposes 10 “bar stools” for on-site eating. Therefore, per said Table 3, the building will require a total of 15 parking spaces². However, said Table 3 further provides that “the special permit required for an eating establishment may include modifications of these requirements based upon the specifics of each case”. Accordingly, the special permit for Applicant’s proposed use needs to include a modification of the parking requirements to allow the building to continue to be served by the existing eight (8) parking spaces.

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:

¹ Papa John’s provided take-out service only and was considered a retail use. Therefore, the parking for the building was calculated as follows: $2,400 \times 1/200 = 12$

² $(1,200 \times 1/200) + (1,200 \times 1/250) + (10 \times 2/5) = 6 + 4.8 + 4 = 14.8$

Special permits shall be granted . . . only upon [the] 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 should 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 characteristics and social structure;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on town services, tax base, and employment.

Applicant respectfully submits that the proposed restaurant and the requested modification of the parking requirements satisfy the above stated requirements and criteria for the issuance of the requested special permit. It should be noted that special permit is required only because Applicant proposes to offer on-site consumption of food and beverage. In fact, if such on-site consumption was not offered Applicant's operations would be allowed as of right as a "retail business" and as a "general service establishment" and no parking relief would be required (given the pre-existing nonconforming condition). Applicant submits that the proposed "bar stools" will not encourage additional patrons to drive vehicles to the establishment. Instead, the "bar stools" are instead intended to encourage patrons from Dedham Square and the surrounding area to walk to the establishment.

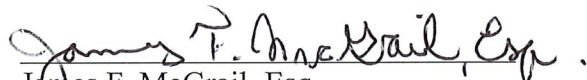
No one appeared in support or in opposition to the requested relief.

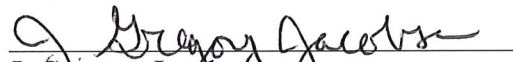
Upon motion duly made the ZBA voted unanimously (5-0) to approve Applicant's request such special permits required for conducting, operating, and maintaining an

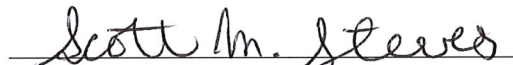
approximate 1,200 net square foot restaurant (i.e., a use requiring a common victuallar permit) with seating for approximately ten (10) patrons utilizing the existing parking (8 spaces) for the entire building at 320 Washington Street.

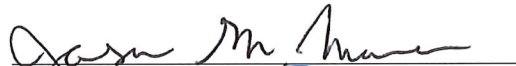
Appeals of this decision, if any, shall be made pursuant to Section 17 of Chapter 40A of the General Laws of Massachusetts and shall be filed within twenty days after the date of filing of notice of this decision with the Town Clerk. Applicant is advised that no special permit shall take effect until 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: September 26, 2019


James F. McGrail, Esq.



J. Gregory Jacobsen


Scott M. Steeves


Jason M. Mammone, P.E.


Sara Rosenthal, AIA, LEED AP

Attested to by Administrative Assistant


Jennifer White Doherty