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**TOWN OF BELMONT
ZONING BOARD OF APPEALS**

2018 MAY 18 PM 3:12

CASE NO. 17-30
APPLICANT: NICHOLAS LEO, DBA PATRIOT DONUTS
PROPERTY: 344 Pleasant Street Lot 4
DATE OF PUBLIC HEARING: February 5, 2018
Continued: March 5, 2018
Continued: April 2, 2018
Continued: May 14th, 2018
MEMBERS SITTING: Jim Zarkadas, Vice Chairman
Craig White
Andrew Plunkett
Phil Ruggiero, Associate Member
MEMBERS VOTING: Jim Zarkadas, Vice Chairman
Craig White
Andrew Plunkett
Phil Ruggiero, Associate Member

Record Owner = Belmont Pleasant Street LLC
Introduction

This matter came before the Board of Appeals ("Board") of the Town of Belmont ("Town") acting as Variance and Special Permit Granting Authority under the Zoning By-Law of the Town of Belmont, Massachusetts ("By-Law") and Chapter 40A of the Massachusetts General Law ("Zoning Act"). The Applicant NICHOLAS LEO, DBA PATRIOT DONUTS ("Applicant") requests one (1) SPECIAL PERMIT PURSUANT TO A REMAND BY THE SUPERIOR COURT TO CONSIDER ZONING BOARD OF APPEALS CASE # 15-34 TO OPERATE a FAST FOOD RESTAURANT AT 344 PLEASANT STREET located in a Local Business III (LBIII) Zoning District.

The Board held a duly noticed hearing on the application on February 5, 2018, continued on March 5, 2018, continued on April 2, 2018 and deliberated on May 14, 2018. The Applicant NICHOLAS LEO and his ATTORNEY JOESEPH NOONE proposed the amended application which was filed on November 6, 2017 with the Board in connection with the remand (the "Amended Application"). The Amended Application is for a 1,500 square foot, 15-seat Dunkin Donuts. Submitted architectural plans, photos (exterior and interior), a traffic study, a proposal including hours of operation, number of employees, deliveries, dumpster schedule and parking. At the February, March and May (public portion closed) meetings there were 7 neighbors (4 abutters) that spoke in opposition including 4 letters that were submitted to the Board and a petition showing 40 residents against the proposal. At those same meetings there was also 6 that spoke in favor of the proposal and a petition showing 500+ residents in favor of the proposal 30 of which were within the neighborhood.



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Proposal

The proposal calls for the construction of a 3,516 square foot retail building and 21 associated parking spaces at 344 Pleasant Street, a corner lot consisting of 15,510 square feet located in a Local Business III (LBIII) Zoning District. The property was formally used as a gasoline service station and has been vacant for several years. The Applicant proposes to demolish the existing structure and construct a new building that will have a gross area of 3,516 square feet. The lot coverage will be 23 %, which is a reduction from the existing 27% (35% lot coverage is permitted in a Local Business III District under Section 4.2.1 of the By-Law). The building will contain three retail spaces consisting of 1,500 sf; 1,001 sf; and 746 sf with 269 sf of common space used for restrooms. The future tenants are currently unknown, although a special permit application to locate a Dunkin' Donuts in the building is the case that is before the ZBA. The building's exterior will have a brick veneer facade, EFS crown molding, gooseneck lighting, and fabric awnings. Depending upon the tenant, exterior seating and tables might be utilized. Mechanicals will be located on the roof and screened from view by a parapet wall. The HVAC system will comply with noise limitations of the By-Law. The site will have 21 parking spaces including one handicap van accessible space. Section 5.1.2 (g) of the By-Law requires 14 parking spaces for retail, sales and services uses. As such, the 21 proposed parking spaces exceed the parking requirements for most uses at the site. Site access will be provided via curb cuts on both Pleasant Street and Brighton Street. These curb cuts will provide access to a parking area located at the rear of the proposed building. One of the three existing curb cuts on Pleasant Street will be eliminated. The curb cut on Brighton Street will be moved southerly and be reduced in width. The reduction in size and relocation creates safer conditions for pedestrians compared to what currently exists. Exterior lighting will consist of gooseneck lighting containing compact florescent light bulbs of 42 maximum watts. Lighting will also consist of two-light outdoor wall cylinders with maximum 65watt bulbs, by each entrance. Landscaping will be consistent with the plans submitted and approved by the Planning Board. A dumpster will be located within a 6-foot-high, white, vinyl fence, approximately 10 feet from the rear property line. Frequency of trash pickup will depend upon the use of the retail spaces, but it is expected the dumpster will be emptied no less than two times per week, during normal business hours. The Applicant will erect signage over each of the entrances to the property in conformity with the By-Law's size requirements. Due to contamination of the site that occurred under previous ownership, the property is currently being monitored by the DEP. Monitoring activities are anticipated to continue for approximately one more year and will not be impacted from construction. One parking space will be utilized for monitoring until the site is released by the DEP. A traffic analysis proposing a coffee shop/ Dunkin Donuts and two other retail spaces are expected to generate three net new vehicle trips during the morning peak hour and zero net new vehicle trips during the evening peak hour. Based on this trip generation estimate, it is unlikely that the proposed redevelopment will have a detrimental impact on surrounding traffic networks. The applicant also submitted a report showing a by right proposal of a convenience store that would increase the level of traffic. There were multiple traffic studies submitted including a peer review.

Conclusion

On May 14th, 2018, the Board deliberated and found that the proposal's benefits to the Town will outweigh any adverse effects for the Town or the vicinity. The restaurant use will be beneficial to the Town and fulfill a need. It will not create any significant adverse impact on traffic or safety.

Accordingly, upon motion duly made by Andrew Plunkett and seconded by Jim Zarkadas, the Board voted 4-0 to grant the relief for one (1) Special Permit requested to operate a Fast

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Food Restaurant to the Applicant NICHOLAS LEO, DBA PATRIOT DONUTS ("Applicant") Pursuant to a Remand by the Superior Court to case #15-34 To Operate a Fast Food Restaurant at 344 Pleasant Street located in a Local Business III (LBIII) Zoning District.

Subject to the following conditions:

1. The Special Permit is not transferable.
2. The hours of operation of the restaurant shall not exceed Monday through Sunday 6:00 a.m. to 10:00 p.m.
3. There will be 2 types of deliveries, a small delivery vehicle that will make daily delivers during non-operational hours and a truck delivery weekly between the hours of 11:00 am – 2:00 pm Monday through Friday.
4. Dumpster pick up will be between 2-3 times per week and will be between the hours of 11:00 am – 2:00 pm Monday through Friday.

For the Board:

Dated: May 18, 2018



Ara Yogurtian
Assistant Director
Office of Community Development

I, Ellen O'Brien Cushman, hereby certify that twenty (20) days have elapsed after the decision was filed in the office of the Belmont Town Clerk on May 18, 2018, and further I certify that no appeal has been filed with regard to the granting of said one (1) Special Permit with four (4) conditions.

June 8, 2018



Ellen O'Brien Cushman, Town Clerk
Belmont, MA

Any appeal from this decision must be made pursuant to Ch.40A, S.17, MGL, and must be filed within 20 days after the filing of such notice in the office of the Town Clerk.

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Southern Middlesex Land Court
Registry District

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On: Jun 12, 2018 at 11:30A

Document Fee 75.00

Receipt Total: \$75.00

NOTED ON: CERT 257199 BK 01457 PG 2

ALSO NOTED ON:

Arroy Pody d name 617 489 3300

NAME TEL

STREET ADDRESS

CITY OR TOWN ZIP

I HEREBY ATTEST AND CERTIFY ON 9/24/2018
THAT THE FOREGOING DOCUMENT IS A FULL, TRUE AND
CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE
AND IN MY LEGAL CUSTODY

MARIA C. GURTATORE
ASST RECORDER
LAND COURT

BY *Maria C. Gurtatore*