

TOWN OF BELMONT
ZONING BOARD OF APPEALS

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Case No. 17-16

Applicant: Filippo Demagistris

Property: 75 Leonard Street

Date of Public Hearing: June 19, 2017

Members Sitting: Eric Smith, Chair
Nicholas Iannuzzi
Jim Zarkadas
Andrew Plunkett, Associate Member
Phil Ruggiero, Associate Member

Members Voting: Eric Smith, Chair
Nicholas Iannuzzi
Jim Zarkadas
Andrew Plunkett, Associate Member
Phil Ruggiero, Associate Member

This matter came before the Board of Appeals (the “Board”) of the Town of Belmont (the “Town”) acting as Variance and Special Permit Granting Authority under the Zoning By-Law of the Town of Belmont, Massachusetts (the “By-Law”) and Chapter 40A of the Massachusetts General Law (the “Zoning Act”). The applicant, Filippo Demagistris (“Applicant”), seeks a special permit under § 1.5 of the By-Law to reduce the number of parking spaces to operate a Restaurant at 75 Leonard Street in a Local Business I Zoning District.

A Restaurant use (up to 10,000 square feet) is permitted as of right in a Local Business I Zoning District under § 3.3 of the By-Law. However, the Applicant needs relief from the parking requirements of the By-Law. As set forth in the parking calculations that accompanied the application, § 5.1.2(g) of the By-Law allows 13 parking spaces for the prior service establishment or retail business use of the premises. (75 Leonard Street has 3,266 square feet on the first floor and 1,802 square feet in the basement). The proposed 133-seat Restaurant use of the premises requires 67 parking spaces under § 5.1.2(d). The Applicant seeks to reduce the required number of parking spaces by 54.

The matter came before the Board at the hearing on June 19, 2017. Before hearing the application, the Board considered whether it was properly before the Board in light of the particular circumstances and relief sought.

The application does not involve a change or extension of a prior non-conforming use, as the proposed Restaurant use is as of right. The application instead concerns a change of use that

requires more parking to comply with § 5.1.2. See § 5.1.1(a) of the By-Law. Under § 5.1.1(b) of the By-Law, the number of parking spaces may be reduced to less than the number required under § 5.1.2 “if, in acting on Design and Site Plan Review, the Planning Board determines that a smaller number would be adequate for all parking needs” based on special circumstances. Section 7.3.2 provides that the Planning Board shall hear and decide all petitions for Design and Site Plan review, and it specifies in § 7.3.2(a) that Design and Site Plan Review is required for any “change in use of a predominantly non-residential building greater than 2,500 gross square feet in any zoning district, or a proposal that results in the need for six (6) or more parking spaces on the lot.” The proposed restaurant exceeds 2,500 square feet, and the proposed Restaurant use requires 54 more spaces.


Section 7.3.2(c) provides that Design and Site Plan Review is not required for uses that require a special permit for the use. See also § 7.4.2(b). However, that is not the case here, as a Restaurant use is allowed as of right. Section 7.3.2(c) further provides that if a special permit is required under § 1.5 of the By-Law (governing nonconforming uses or structures) then that special permit “shall be obtained prior to” the submittal of an application for Design and Site Plan Review, which indicates that such a § 1.5 special permit would not substitute for Design and Site Plan Review.

In the circumstances, the Board concluded that the proposed reduction in parking spaces from the number required by § 5.1.2(d) was properly a matter for the Planning Board acting on Design and Site Plan Review under § 5.1.1(b) and § 7.3.2 of the By-Law.

Accordingly, upon motion duly made and seconded, the Board voted 5-0 to dismiss the application without prejudice for lack of jurisdiction because it was properly a Design and Site Plan Review matter for the Planning Board.

For the Board,

June 21, 2017



Ara Yogurtian
Assistant Director
Office of Community Development