



TOWN OF HINGHAM

Planning Board

NOTICE OF DECISION SITE PLAN REVIEW

IN THE MATTER OF:

Applicant/Owner: W/S/M Hingham Properties, LLC
33 Boylston Street
Chestnut Hill, MA 02467

Property: 96 Derby Street, Suite 325, Hingham, MA 02043

Deed Reference: Plymouth County Registry of Deeds, Book 20043, Page 290 and
Book 24538, Page 298

Plan References: "Derby Street Shoppes, Hingham, MA," prepared by Unknown, dated
March 11, 2021 (2 Sheets)



SUMMARY OF PROCEEDINGS

This matter came before the Planning Board (the "Board") on the application of W/S/M Hingham Properties LLC (the "Applicant") for Site Plan Review with Waivers under §§ I-G and I-I of the Zoning By-Law (the "By-Law") and such other relief as necessary to allow Legal C Bar to retain a permanent seasonal outdoor seating area that includes four parking spaces adjacent to the restaurant located at 96 Derby Street in the Industrial Park and South Hingham Development Overlay Districts. The Applicant also submitted a related application for a Special Permit A3 Parking Determination under § V-A of the By-Law.

The Board opened a duly noticed public hearing on its Site Plan Review application concurrently with a hearing on the Special Permit A3 application at a meeting held remotely on March 14, 2022 via Zoom as an alternate means of public access pursuant to Chapter 20 of the Acts of 2021 temporarily suspending certain provisions of the Open Meeting Law. The Board panel consisted of regular members Kevin Ellis, Chair, Gordon Carr, Judith Sneath, and Gary Tondorf-Dick. Victoria Maguire, representing W/S/M Properties, LLC, presented the application to the Board on behalf of Legal C Bar. At the conclusion of the review, the Board voted unanimously to grant Site Plan Approval with Waivers under §§ I-G and I-I of the By-Law with a conditions set forth below.

Throughout its deliberations, the Board has been mindful of the statements of the Applicant and the comments of the general public, all as made or received at the public hearing.

BACKGROUND

Legal C currently operates at Derby Street Shops and obtained approval to operate an outdoor dining area from the Select Board in both 2020 and 2021 under the Town of Hingham’s COVID-19 Temporary Policy Regarding Outdoor Table Service (OTS) adopted pursuant to COVID-19 Order No. 35 and extended to April 1, 2022 by Order No. 50. The OTS area is located both along the Legal C Bar and Talbots facades as well as in 6 parking spaces in front of Legal C Bar and Williams Sonoma. The proposed permanent outdoor table seating would allow for 30 seats and the removal of 6 parking spaces on a seasonal basis. Of the 6 parking spaces, 4 are proposed for seating and 2 are proposed to be blocked off for proper distance in between the seating, parking, and sidewalk. The proposed 30 seats would be seasonally flexed from the restaurant’s permitted indoor seats. No additional seats are proposed to the current count of 196 seats.

According to the latest Derby Street Shops Shared Parking Analysis, peak parking hours for Derby Street Shops occurs at approximately 1PM on weekdays and 2PM on weekends. As reflected in the Analysis, during peak demand in the months of May through September, the property maintains a surplus parking supply ranging from 438 spaces to 531 spaces. Conversely, the Shopping Center generates peak demand in the month of December that maxes out parking onsite. The amount of available parking during peak hours when outdoor table seating would occur seasonally remains ample. The seasonal removal of 6 parking spaces would not adversely affect parking needs of other businesses or customers in the Shopping Center.

The Board also considered potential impacts of the outdoor dining area on pedestrian circulation. The proposed plan depicts a minimum 4.5’-wide sidewalk to remain between the seating areas. The Zoning Board of Appeal Special Permit, dated August 20, 2020, allows certain activities, including community events and outdoor displays, to be located on sidewalks at Derby Street; however, the permit requires that the remaining portion of the sidewalk be maintained at a minimum width of 6’.

During the course of the hearing, the Board members expressed general support for the application, along with specific concerns about seasonal displacement of parking spaces. The Board then committed to review of the approval criteria and imposition of appropriate safeguards through conditions.

WAIVERS

The Applicant requested a full waiver of Site Plan Review; however, the Board instead considered a waiver of the following submittal requirements d-j, pursuant to § I-I, 4, as they are not affected by the proposed seasonal "flex" of seating:

- d. Analysis of compliance with all relevant dimensional provisions of the By-Law;
- e. Detailed information on utilities, landscaping, refuse storage and removal;

- f. Grading plan, net import/export of material, drainage and traffic analyses;
- g. Analysis of capacity of Town soils, water supply, ways and services
- h. Analysis of compliance of construction activities
- i. Site lighting plan
- j. Erosion control and Operations & Management plans

FINDINGS

Based on the information submitted and presented during the review, and the deliberations and discussions of the Board during the meetings, the Board made the following findings in accordance with the Review Standards under § I-I, 6 of the By-Law:

- a. **Protection of abutting properties against detrimental uses by provision for surface water drainage, fire hydrant locations, sound and site buffers, and preservation of views, light and air, and protection of abutting properties from negative impacts from artificial outdoor site lighting.**

No changes are proposed to drainage, fire hydrant locations, sound and site buffers, or preservation of views, light and air.

- b. **Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets; the location of driveway openings in relation to traffic or to adjacent streets, taking account of grades, sight distances and distances between such driveway entrances, exits and the nearest existing street or highway intersections; sufficiency of access for service, utility and emergency vehicles.**

With the modest exceptions, there are no changes to vehicular and pedestrian movement, location of driveway openings, or access for service, utility and emergency vehicles are proposed within the site. The exceptions include outdoor dining area located on the sidewalk and within specified parking spaces. The proposed plan maintains adequate pedestrian access along the sidewalk and diners within the parking area will be protected with jersey barriers.

- c. **Adequacy of the arrangement of parking, loading spaces and traffic patterns in relation to the proposed uses of the premises; compliance with the off-street parking requirements of this By-Law.**

The Derby Street Shops Shared Parking Analysis confirms that there is a surplus of parking during peak hours of operation for the shopping center during those months in which the restaurant would offer outdoor dining. Additionally, the Applicant demonstrated that seasonal operation of the outdoor dining area pursuant to the Outdoor Table Service (OTS) permit originally issued by the Select Board on September 15, 2020 did not adversely affect parking availability within the shopping center, despite the displacement of 6 parking spaces.

- d. **Adequacy of open space and setbacks, including adequacy of landscaping of such areas.**

No changes to open space, setbacks, or landscaping are proposed.

- e. **Adequacy of the methods of disposal of refuse and other wastes during construction and resulting from the uses permitted on the site including, but not limited to, discarded building materials, concrete truck wash out, chemicals, litter and sanitary wastes; provided, that discharge of refuse or other wastes into the municipal stormwater system shall be expressly prohibited;**
No construction is proposed for this project.
- f. **Prevention or mitigation of adverse impacts on the Town's resources, including, without limitation, water supply, wastewater facilities, energy and public works and public safety resources.**
The restaurant capacity will not be increased since permitted seats will be flexed seasonally from indoors to outdoors; therefore, Town resources, including water and public safety, will not be impacted.
- g. **Assurances of positive stormwater drainage and snow-melt run-off from buildings, driveways and from all parking and loading areas on the site, and prevention of erosion, sedimentation and stormwater pollution and management problems through site design and erosion controls in accordance with the most current versions of the Massachusetts Department of Environmental Protection's Stormwater Management Policy and Standards including the Massachusetts Stormwater Handbook, the Massachusetts Erosion and Sediment Control Guidelines and, if applicable, additional requirements under the Town of Hingham MS4 Permit for projects that disturb more than one acre and discharge to the Town's municipal stormwater system.**
No changes to drainage systems or patterns are proposed. The proposed outdoor dining will be located on existing impervious surfaces.
- h. **Assurance that appropriate Best Management Practices have been incorporated to minimize the amount of disturbed areas and protect natural resources, stabilize sites when projects are complete or operations have temporarily ceased, protect slopes on the construction site, protect storm drain inlets and armor all newly constructed outlets, install perimeter controls at the site, stabilize construction site entrances and exits to prevent off-site tracking of material, and to provide for regular inspection of stormwater controls at consistent intervals.**
No disturbance to land or natural resources is proposed. The proposed outdoor dining will again be located on existing impervious surfaces.
- i. **Protection of natural and historic features including minimizing: the volume of cut and fill, the number of removed trees of 6 inches caliper or larger, the removal of stone walls, and the obstruction of scenic views from publicly accessible locations.**
The outdoor dining area will be located interior to the shopping center and will not affect views from public ways.
- j. **Minimizing unreasonable departure from the character and scale of buildings in the vicinity or as previously existing on or approved for the site.**
No changes to the existing structures are proposed.

DECISION

Upon a motion made by Kevin Ellis and seconded by Gordon Carr, the Board voted unanimously to GRANT the application of W/S/M Properties LLC for Site Plan Approval with Waivers, under §§ I-G and I-I, to allow Legal C Bar to maintain a permanent seasonal outdoor seating area that displaces 6 parking spaces and a portion of the sidewalk adjacent to the restaurant located at 96 Derby Street in the Industrial Park and South Hingham Development Overlay Districts, subject to the following conditions:

1. After expiration of the current Outdoor Table Service Permit on April 1, 2022 and prior to operation of the outdoor dining area, the Applicant shall submit a revised plan for review and approval by the Community Planning Director and the Building Commissioner to demonstrate that a minimum of 3' is provided between tables and stanchions and that a minimum of 6' remains beyond the stanchions for an unobstructed pedestrian walk.
2. The Applicant shall be responsible for regular cleaning of trash and food in the outdoor dining area and shall not allow trash, food or other nutrients to accumulate or be deposited (intentionally or unintentionally) into storm drains.

For the Planning Board,



Kevin Ellis, Chair

April 12, 2022

In Favor: Kevin Ellis, Gordon Carr, Judith Sneath, and Gary Tondorf-Dick

Opposed: None

