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Of Counsel

PAUL J. McCARTHY

March 1, 2016

Jay Rosa
Zoning Coordinator
Town of Brookline
333 Washington Street
Brookline, MA 02445

Re: 209 Harvard Street
Modification of Special Permit #2260B

Dear Jay:

209 Harvard Street is a 5 story medical office building with two stories of garage parking and an outdoor surface parking lot consisting of 65 parking spaces, two of which are no longer used for parking. In 1978, relief was originally granted by the Zoning Board of Appeals ("ZBA") to allow for the dual use of the existing parking spaces which would service the medical facility during the day and the neighbors during the night. Coolidge Corner is one of the most densely populated areas in Brookline and the creation of off street parking spaces was a valuable and necessary resource for the neighborhood. This use continued for approximately 30 years and the owner has no knowledge of any significant problems or complaints.

In 1999, the owners of the building petitioned the ZBA to remove temporal restrictions on the dual use and to allow the use for up to sixty five parking spaces. The ZBA approved another special permit for the dual use however conditioned the use on three conditions: 1) the parking spaces along the driveway are to be used only for drop off and pick up of visitors, 2) the dumpster to be relocated to an area approved by the Planning Department, and 3) the permit to be renewed within 5 years or extended by the ZBA after another public hearing. The owners now seek to modify the special permit granted in 2000 to remove the third condition which imposes a 5 year time limit on the dual use permit first granted approximately 30 years ago and which has been in operation since without significant issue.

Since the 1999 decision, the surface parking lot has been in full compliance with conditions 1 and 2 of the 1999 ZBA Decision. The spaces along the driveway are actively monitored by an attendant who is on site and the dumpster was relocated to an area approved by the Planning Department. In the meantime, the owners applied for and received an Open Air Parking Space License from the Board of Selectmen in 2000 and every year thereafter including 2016. However, as the Open

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Air Parking Space Licenses were being issued year to year by the Selectman's Office, the owner neglected to apply to the ZBA and renew the special permit. The Owner apparently did not appreciate that these were two separate and distinct requirements by the Town. Failing to previously extend the special permit was a clerical oversight and/or misunderstanding and was not intended to avoid the Town's requirements.

As soon it was brought to the attention of the Owner, Merrill & McGeary was retained to investigate the oversight and file for the necessary extension. The Owner now seeks to modify the special permit granted in 2000 to remove the third condition which imposes a time limit on the special permit. As reasons therefore, the Owner states the following:

1. To the best of his knowledge, there have been no significant complaints or issues related to the use of the parking lot as a dual use parking lot;
2. The Board of Selectman has issued the Open Air Parking Space License on a yearly basis for the past 30 plus years. The Board of Selectman will continue to monitor license compliance.
3. The residents in the neighborhood depend on the daily use of the parking spaces and have been using these spots for nearly 30 years. Denying relief would strip these individuals of their parking.
4. There is no modification to the site necessary to grant the relief requested and the surface parking lot will remain in the same condition as it has been since the 1999 ZBA decision.
5. In conclusion, the specific site remains an appropriate location for this use, there will be a material benefit to the neighborhood, the use does not cause undue nuisance or hazard to vehicles or pedestrians, and there will be adequate facilities to ensure proper operation of the site.

Enclosed herewith in support of this application are the following:

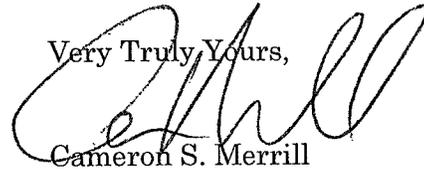
1. Special permit application,
2. Plans depicting the outdoor parking spaces, location of the dumpster and drop off and pick up zone.
3. Copy of the 1999 ZBA decision.

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Zoning Coordinator
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Kindly schedule this matter for the next available ZBA hearing. Thank you.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'C. Merrill', written over the typed name.

Cameron S. Merrill

Enclosures

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BK 13930PG290



TOWN of BROOKLINE

Massachusetts

BOARD OF APPEALS

Town of Brookline
Board of Appeals
Case No. 2260B

RECEIVED AND RECORDED
NORFOLK COUNTY
REGISTRY OF DEEDS
DEDHAM, MA

CERTIFY
Barry T. Hannon
BARRY T. HANNON, REGISTER

The Langley Corporation, petitioner and record owner, applied to the Building Commissioner for permission to rent up to fifty-five (55) parking spaces in an existing parking facility to area residents and for medical office parking per plans located at 209 Harvard Street. The request was denied and appeal was taken from the decision of the Commissioner.

On September 30, 1999, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and established Thursday, November 18, 1999 at 7:00 p.m. in the Selectman's Hearing Room on the sixth floor of the Town Hall as the time and place for a public hearing on the appeal. Notice of hearing was mailed to the petitioner, to his attorney, to the owners of properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on October 7, 1999 and October 14, 1999 in the Brookline Tab. A copy of said Notice is as follows:

Legal Notice
Town of Brookline
Massachusetts
Board of Appeal
Notice of Hearing

PETITIONER: The Langley Corporation
LOCATION OF PREMISES: 209 Harvard Street
DATE AND PLACE OF HEARING: Thursday, November 18, 1999 at 7:00 PM in the Selectman's hearing room on the sixth floor of Town Hall, 333 Washington Street, Brookline, Massachusetts

A public hearing will be held for a variance from Section 6.11(a), Table of Off-Street Parking Facilities; and special permit under Section 4.30, Table of Use Regulations, Use #22; Section 5.09(b)(1)(9), Community and Environmental Impact and Design Review; Section 6.11(a)(3), Off Street Parking Space Regulations; and modifications of Board of Appeals Case #2260A dated April 30, 1980.

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Book 5667 page 127

Of the Zoning By-Law to rent up to fifty-five (55) parking spaces in the existing parking facility to area residents and for medical office parking per plans
At 209 Harvard Street
Said premises located in a M1.5 (apartment house) Residence and L1.0 (local) Business District

Bailey S. Silbert
Diane R. Gordon

At the time and place specified in the notice a public hearing was held by this Board, with sitting members Diane R. Gordon as Chair, Bailey S. Silbert and Nicholas Elton present. The petitioner was represented by Marc D. Lazar, Esquire, of Gadsby and Hannah LLP, 225 Franklin Street, Boston, MA 02110.

Mr. Lazar provided a brief history of the parking lot. The site is located at 209 Harvard Street and contains a five story medical office building. The existing building has four floors of office space, a first floor level with parking for eighteen cars, and a basement level with parking for twenty-one cars and a rear outside parking area for thirty-six cars. Mr. Lazar advised the Board that the petitioner would like to continue to rent parking spaces to the medical office building during the day and to residents of the area overnight, as it has been done for at least twenty (20) years. The petitioner seeks to modify Board of Appeals Case #2260 that originally allowed for a dual use provision for fifty-five of sixty-five parking spaces and to remove any time limits imposed on the decision.

The petitioner would like approval from the Board to allow the dual use for sixty-five parking spaces because there is a demand for parking among the local residents. The petitioner has a good relationship with neighbors of the property, and he would like to maintain this accommodation to the residents.

There were no objectors.

The Planning Board submitted its written report. Jennifer Lutke of the Planning Board recommended approval of the modification with two conditions: (1) Approximately ten spaces (in addition to the sixty-five (65) spaces that are the subject of this appeal) located along the side of the driveway have been added since Case #2260 had been approved. These spaces must be removed. (2) A fenced in dumpster is located in the open-air parking lot along the east wall of the building that partially blocks the back entrance of the basement parking lot. The dumpster shall be relocated to prevent traffic hazards.

Mr. Frank Hitchcock of the Building Department advised the Board that the Building Department is not opposed to granting the special permits, provided that the conditions set forth by the Planning Board are upheld. Mr. Hitchcock added that the Building Department would request a time limitation on the special permits.

The Board agreed that the operation of the parking lot facility is needed by the employees of the office building and local residents. We, therefore, finding that the

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requirements of Section 9.5(a) are met, grant to the petitioner the following relief: Special permits under Section 4.30 (Use No. 22), Section 5.09(b)(1), Section 5.09(b)(9) and Section 6.11(a)(3), subject to the following conditions:

1. The parking spaces located along the south side of the entrance/exit driveway are forbidden and shall be removed. The area may be used to drop off visitors at the premises only.

2. The dumpster and enclosure located in the open air parking lot along the east wall of the building shall be relocated in such a way that it does not block any entrances and does not cause a traffic hazard. This relocation shall be subject to the approval of the Director of Planning and Community Development.

3. The granting of the required special permits shall be subject to review by this Board in five years. The relief granted herein shall expire on November 18, 2004, unless this Board after another public hearing, shall vote to extend the same.

Date Filed: December 2, 1999

A True Copy:

ATTEST:

Patrick J. Ward

Patrick J. Ward, Clerk
Board of Appeals

Diane R. Gordon, CHAIR

Diane R. Gordon

Twenty days have elapsed and no appeal has been filed

A True Copy:

ATTEST:

Patrick J. Ward

Patrick J. Ward
Town Clerk

