TO: Chair and ZBA members

FROM: Marge Schmuckal, Zoning Administrator

SUBJECT: Interpretation Appeal at 20 Marginal Way

DATE: September 26, 2014

This memo is a follow up on my original determination letter. The Property was developed as a drive-thru car wash in 1982. In 2006 the use was made legally nonconforming by the new B-7 zone that was placed upon this Property and other properties in the vicinity. Legal nonconforming uses are allowed to continue even when a zone change makes them nonconforming.

The B-7 zone specifically defines the drive- thru component as an accessory use under section 14-295(e)1. The current principal use of the Property is a car wash facility. It is pointed out that this section states that accessory uses are customarily incidental and subordinate to the location, function and operation of permitted uses. The drive-up or drive-thru is not a specific permitted use on its own. If the principal use is discontinued, the accessory use(s) do not have standing to remain without the principal use. This zone and section go on to limit when and how the accessory use of a drive-up is allowed with in it.. It is only allowed where permitted in this B-7 zone. The drive-up function is only allowed under permitted conditional uses, as an accessory use for banking. There are further listed conditions that must be met prior to approval for banking. It is the Planning Board that would review the listed conditions.

I have never indicated that the Northern Pride Auto Wash must be demolished if the car wash use was discontinued. It is the owner of the Property that wants to change the use to either a restaurant use or a bank. Clearly a change of use to a retail use without a drive thru is allowable as is the bank without a drive thru. The choice of changing the use to a bank with drive-up facilities is also allowable with conditional use approval. The Bank with drive-up services use must also meet the listed conditions given. Please note that it is not the Zoning Administrator who needs to make a final determination on a banking use with the accessory drive-thru, it is the Planning Board who makes the final decision under this conditional use allowance.

I also contend that the drive-up/drive-thru can easily be closed up on both ends of the existing structure that is now being used for a car wash. With that done, along with interior alterations, I contend that the building use can be changed to many of the permitted uses listed in the B-7 zone, such as offices, retail, restaurant, personal services, business services, and offices of business trades-people. All the listed uses are equally weighted. There is no highest and best use according to zoning. The building does not need to be torn down. The nonconformity section of the Ordinance even gives rights to rebuild within the same footprint and volume. And actually the B-7 zone allows a certain amount of footprint expansion

without triggering the minimum height requirements and the maximum front setback requirement. I am not aware that current building is legally nonconforming for any other dimensional requirement.

I also respectfully disagree that a car wash would be allowed in the I-M zone under the performance-based use as outlined in 14-248. I am not convinced that a car wash meets listed requirements. It has been stated that a car wash was similar in nature to an automotive repair. Although both functions involve cars, they are different functions. Car repairs take a significant amount of time to accomplish whereas car washes are an in-out function. The selling of cars would also not be allowed under performance based used. Just because cars are involved, it doesn’t automatically grant a use right.

I further respectfully disagree that the applicant does not have to give supportive evidence to defend their assertion that any use (a car wash in this case) meets the requirements of the Ordinance as written (in this case section 14-248, Performance Based Uses). Because there is no specific list of uses and instead bases approvals on given standards, it certainly behooves an applicant to supply supporting evidence. At this time, I am not convinced that the performance base allowances have been met.

I still support my decision on how the Ordinance would not allow a drive-thru using the nonconforming sections.

Attached are copies of the B-7 zone, the Nonconformity section, and the I-M section of the Ordinance.