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In Response Reference File No. 46413

August 3, 2018

VIA EMAIL: planningoffice@town.lynnfield.ma.us
Lynnfield Planning Board
Town of Lynnfield
55 Summer Street
Lynnfield, MA 01940

RE: 160 Moulton Drive Special Permit & Site Plan Review Application
Lynnfield Zoning Board of Appeals Case No. 18-18

Dear Sir/Madam:

Enclosed is a memorandum addressing the legal issues pertaining to the proposed change in nonconforming use pursuant to M.G.L. c. 40A, § 6 and Section 5.2 of the Lynnfield Zoning Bylaw, with respect to 160 Moulton Drive in Lynnfield (Lynnfield ZBA Case No. 18-18), which the Board requested at its July 25, 2018 hearing. A copy of this memo is also being provided to the Lynnfield Zoning Board of Appeals and Town Counsel, Tom Mullen.

Very truly yours,

REGNANTE, STERIO & OSBORNE LLP

By _____
THEODORE C. REGNANTE

TCR:sgo
Enclosure

cc; Lynnfield Zoning Board of Appeals(w/enc.)
(via email: wbarrasso@town.lynnfield.ma.us)
Thomas A. Mullen, Esq. (w/enc.) (via email: tmullen@thomasamullenpc.com)
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To: Lynnfield Planning Board
Lynnfield Zoning Board of Appeals

From: Jesse D. Schomer, Esq.
Regnante, Sterio, & Osborne LLP

Date: August 3, 2018

Re: Special Permit Pursuant to M.G.L. c. 40A, § 6 & Lynnfield Zoning Bylaw § 5.2.1
Lynnfield Board of Appeals Case No. 18-18

This firm is counsel to 160 Moulton Drive LLC ("Applicant"), which has filed with the Lynnfield Zoning Board of Appeals ("ZBA") a request for a special permit and site plan approval with respect to the property located at 160 Moulton Drive in Lynnfield ("Property"), to replace the existing Bali Hai restaurant with a 32-unit apartment building ("Project"). In support of that application, the Applicant made an informal presentation of the Project at the July 25, 2018 meeting of the Planning Board ("Board"). At that meeting, following the conclusion of the Applicant's presentation, and after taking public comments, the Board requested additional briefing on the legal question of whether the current use of the Property as a restaurant, which is a pre-existing, nonconforming use, can be changed to multifamily apartments, another, also nonconforming use.

This memorandum addresses that question, as well as the related question of how the courts approach the question of whether a change, extension, or alteration of a pre-existing, nonconforming use is "not [ ] substantially more detrimental than the existing nonconforming use to the neighborhood," within the meaning of to Section 6 of the Zoning Enabling Act, M.G.L. c. 40A ("Section 6") and Section 5.0 of the Lynnfield Zoning Bylaw ("Bylaw"). We conclude that the proposed change in use from commercial restaurant to multifamily residential can be allowed by Special Permit from the ZBA. An abstract outlining the legal issues presented by this memorandum follows below, followed by a fuller recitation of our reasoning.

Abstract of Legal Issues

1. Local and State "Grandfathering" Protections:

    a. The Bali Hai restaurant is a pre-existing, nonconforming structure, and the use of the Property for a commercial restaurant is a pre-existing, nonconforming use. Both are protected ("grandfathered") pursuant to Section 6 and Section 5.0 of the Bylaw.

    b. Zoning nonconformities can be either dimensional or use-based. Dimensional nonconformities have to do with the physical dimensions of the lot or structures, such as setbacks, area, building coverage, or height. Use-based nonconformities have to do with how property can be used (residential, commercial, industrial, etc.). Grandfathering protections apply to both dimensional nonconformities and use-based nonconformities.

2. Dimensional Zoning Nonconformities:

    a. The grandfathering protections of Section 6 do not apply to new dimensional zoning nonconformities created by the reconstruction, expansion, change, or alteration of a pre-existing, nonconforming structure or use. Rather, such new dimensional zoning nonconformities require a variance. *Rockwood v. The Snow Inn Corp.*, 409 Mass. 361 (1991); *Cox v. Bd. of Appeals of Carver*, 42 Mass. App. Ct. 422 (1997).

    b. As demonstrated by the table of dimensional zoning requirements set forth in Exhibit A, the proposed 32-unit apartment building will comply with all dimensional requirements of the Bylaw. Thus, no variance is required for the new structure.

3. Use-Based Zoning Nonconformities:

    a. "Nonconforming uses may be changed or substantially extended only where the local ordinance or by-law specifically authorizes those practices. The [local zoning authority] is free to liberally allow such changes or to prohibit modification." *Titcomb v. Bd. of Appeals of Sandwich*, 64 Mass. App. Ct. 725, 729 (2005); *see also Blasco v. Bd. of Appeals of Winchendon*, 31 Mass. App. Ct. 32, 39 (1991); *Bldg. Inspector of Waltham v. Mazzone*, 76 Mass. App. Ct. 1102 (2009).

    b. Section 5.2 of the Bylaw provides that "[t]he Zoning Board of Appeals may award a special permit to change a nonconforming use in accordance with this Section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood." Section 5.2.1 of the Bylaw further specifically allows "[c]hange[s] from one nonconforming use to another, less detrimental, nonconforming use."

4. Detriment to the Neighborhood: The proposed change of use from commercial restaurant use to multifamily residential use would be substantially less detrimental to the neighborhood because, among other things, it would result in the discontinuance of an incongruous commercial use and create a use more consistent with the residential neighborhood, eliminate the dimensionally-nonconforming Bali Hai building, generate less traffic and noise, end liquor sales and entertainment at the Property, replace the existing (nonconforming) septic system with a state-of-the-art (and fully compliant) septic system, alleviate existing parking problems, fully comply with all wetlands and drinking water protection regulations (unlike the current use), and generate increased tax revenue for the Town.

"Grandfathering" Protections Under State and Local Law

Under both state and local law, pre-existing, nonconforming uses and structures are afforded certain legal protections, which are sometimes referred to as "grandfathering" protection. At the State level, Section 6 sets forth the minimum protection that all towns and cities must afford

to pre-existing, nonconforming uses and structures. Local zoning regulations can grant *greater* protections to pre-existing, nonconforming uses and structures, but they cannot provide *less* protection. *Rourke v. Rothman*, 448 Mass. 190, 191 n.5 (2007) (Section 6 "sets the floor for 'grandfather' protection in local zoning bylaws.").

Section 6 provides, in relevant part, as follows:

> Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun . . . before the first publication of notice of the public hearing on such ordinance or by-law . . . , but shall apply to any change or substantial extension of such use, . . . to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent . . . . *Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.*

M.G.L. c. 40A, § 6 (emphasis added). For obvious reasons, due to the convoluted language in this Section, the courts have routinely described the task of interpreting Section 6 as "difficult and infelicitous." *Fitzsimonds v. Bd. of Appeals of Chatham*, 21 Mass. App. Ct. 53, 55 (1985).

Locally, Section 5.1 of the Bylaw provides similar protections: "the bylaw shall not apply to structures or uses lawfully in existence or lawfully begun . . . before the first publication of notice of the public hearing . . . at which the bylaw, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized here under."

It is undisputed that the use of the Bali Hai Property as a restaurant and the Bali Hai building itself are grandfathered – that is, protected by Section 6 and Section 5.1 of the Bylaw.[1] [2] Thus, we turn to the nature and extent of the protections that these state and local provisions afford.

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[1] As we explained in our previous memorandum to the Board, the Property has been continually used commercially since 1903, first as the Suntaug Lake Inn hotel and restaurant, and later as the Bali Hai restaurant. This commercial use commenced prior to the institution of zoning controls in Lynnfield, and has never been discontinued or abandoned. Even if that were not the case, however, the building and use would still be protected, since all that is required to be afforded grandfathering protection is that a building or use be in existence for ten years without legal objection. Such buildings and uses are automatically deemed to be lawfully nonconforming. M.G.L. c. 40A, § 7. The Bali Hai building and use obviously meet this standard.

[2] At the July 25, 2018 Planning Board hearing, a question was raised by a local resident as to whether the use of the Bali Hai restaurant may have been partially "abandoned" due to the fact that its business has waned in recent years. No case law supports the proposition that a nonconforming use is deemed abandoned based on a mere downturn

In terms of assessing what grandfathering protections apply to the Property, it is critical to differentiate dimensional nonconformities from use nonconformities. The former has to do with whether a lot and/or structure complies with dimensional zoning requirements (setbacks, lot area and coverage, etc.), which determine what can and cannot be built. The latter has to do with the way a property is used (residential, commercial, industrial, etc.).

Pre-Existing Dimensional Nonconformities Applicable to the Bali Hai Building and Property

With respect to dimensional zoning nonconformities, case law is clear that, absent a variance, any reconstruction, expansion, change, or alteration of a pre-existing, nonconforming structure (other than single- or two-family homes) must comply with the dimensional requirements of local zoning bylaws. The Appeals Court first reached this conclusion in *Rockwood v. The Snow Inn Corp.*, 409 Mass. 361 (1991) (expansion of pre-existing, nonconforming commercial use that created a new dimensional nonconformity required a variance)[3] and *Cox v. Bd. of Appeals of Carver*, 42 Mass. App. Ct. 422 (1997) (expansion of pre-existing, nonconforming use to newly-acquired property that created a new dimensional nonconformity required a variance).[4] [5]

Critically, the Applicant is not seeking permission to extend, alter, reconstruct, or change the existing Bali Hai building. Rather, the Applicant's proposal is – in conjunction with a request to change the use of the Property (discussed below) – to entirely raze the Bali Hai building, abandon all claims of grandfathering protection of that building, and build an entirely new building that will be, as it must, 100% in compliance with all dimensional requirements of the Bylaw, just as *Rockwood* and its progeny require.

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in business. Indeed, case law establishes that, even in the case of total non-use, the fact that a landowner maintained its property in such a way as to enable the use to be re-commenced in the future was held to be sufficient to avoid a finding of abandonment. *Derby Refining Co. v. City of Chelsea*, 407 Mass. 703 (1990). Here, the Bali Hai is and has been at all times use as a commercial business, and the entirety of the Property is dedicated to that ongoing use.

[3] In *Rockwood*, the owner of a seaside Inn in Harwich sought to expand a commercial hotel building, which was nonconforming based on insufficient setbacks. That expansion, however, would have created a new nonconformity (excessive lot coverage). Under those circumstances, the court held that "in the absence of a variance, any extension or structural change of a nonconforming structure must comply with the applicable zoning ordinance or by-law." *Rockwood*, 409 Mass. at 364.

[4] In *Cox*, the owner of a nonconforming motor home park purchased an adjacent lot and sought to expand the motor home park use to that new property. However, the local zoning bylaw had an independent minimum area requirement that specifically applied to motor home parks, wherever they were located. Under those circumstances, the court, based in part on the reasoning in *Rockwood*, concluded that because expanding the nonconforming use to the new property would create a new dimensional nonconformity on the new lot (minimum area for motor home parks), a variance would be required.

[5] Other cases dealing with the same or related issues include *Harrison v. Chatham Zoning Bd. of Appeals*, 20 LCR 332 (2012) (reconstruction of voluntarily-razed nonconforming building not allowed where the new building would create new dimensional nonconformities) and *Schiffenhaus v. Kline*, 79 Mass App. Ct. 600 (2011) (expansion of a nonconforming structure on an undersized, dimensionally-nonconforming lot not allowed based on the insufficient lot size). The holdings in both of these cases, like *Rockwood* and *Cox*, turned on dimensional nonconformities, and are thus not relevant to the question of whether the proposed change of use is permissible.

This compliance is demonstrated in the chart contained in Exhibit A, which shows three critical things:

1. The existing Bali Hai building has an insufficient setback to Oak Street, which makes it dimensionally nonconforming.

2. The Property is today, and will be on the proposed redevelopment, a fully conforming lot, with both adequate land area and street frontage.

3. The proposed 32-unit apartment building will fully comply with all dimensional requirements of the Bylaw.

In sum, the proposed building can be built as a matter of right, without need for any dimensional zoning relief. It therefore fully satisfies *Rockwood*. As such, we turn next to the issue of the use nonconformity applicable to the Property.

Pre-Existing Use Nonconformities Applicable to the Bali Hai Building and Property

As noted above, the Applicant proposes to change the use of the Property from commercial restaurant use to multifamily residential use (32 apartment). Neither of these is a permitted use in the relevant zoning district.

By law, under Section 6, a pre-existing, nonconforming use may be changed to another, also nonconforming use as long as local zoning regulations specifically allow it. The Appeals Court first addressed this issue in *Blasco v. Bd. of Appeals of Winchendon*, 31 Mass. App. Ct. 32, 39 (1991). In *Blasco*, the court had to weigh two competing purposes of the Zoning Enabling Act: on the one hand, to give local officials "the maximum scope for local self-determination", but on the other hand, the "eventual elimination" of nonconformities. The *Blasco* court resolved this tension by concluding that a nonconforming use could be changed, but only if the local zoning bylaw was "permissive" by specifically allowing for such changes.[6]

This rule was reinforced in 2005 in *Titcomb v. Bd. of Appeals of Sandwich*, 64 Mass. App. Ct. 725, 729 (2005), where the court, applying *Blasco*, held that "nonconforming uses may be changed or substantially extended only where the local ordinance or by-law specifically authorizes those practices. The [local zoning authority] is free to liberally allow such changes or to prohibit modification."[7]

In 2009, the Appeals Court again had occasion to revisit the holdings in *Blasco* and *Titcomb* in *Bldg. Inspector of Waltham v. Mazzone*, 76 Mass. App. Ct. 1102 (2009). *Mazzone* involved an

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[6] *Blasco* pertained to a proposed change in use from a gravel pit to a demolition landfill. Finding that the local bylaw allowed "alteration" of nonconforming uses, but not "changes" in nonconforming uses, the court struck down the Special Permit granted by local authorities to allow such change. Subsequent to *Blasco*, the Winchendon Zoning Bylaw has been amended to allow "changes" to nonconforming uses.

[7] At issue in *Titcomb* was the proposed addition of a Dunkin' Donuts store to a pre-existing, nonconforming convenience store. There, the court found that the local bylaw permitted changes in nonconforming uses, and thus upheld the Special Permit.

abutter appeal from a special permit that allowed a landowner to change the use of property from 2-family residential to 3-family residential (both of which were forbidden in the zoning district) pursuant to a provision of the Waltham Zoning Bylaw that allowed one nonconforming use to be changed to another, also nonconforming use – just as the Applicant proposes to do here. Citing *Rockwood*, the abutter claimed that the Waltham Zoning Board lacked the authority to change one nonconforming use to another. The *Mazzone* court rejected that claim and upheld the special permit, since the bylaw provision "specifically and permissively authorizes a change from one nonconforming use to another." In reaching this conclusion, the *Mazzone* court also specifically noted that the rule articulated in *Rockwood*, was not relevant, since "the decision in [*Rockwood*] turned on a dimensional issue that is not present here."

In sum, *Blasco*, *Titcomb*, and *Mazzone* entail that local zoning authorities can allow changes or extensions of nonconforming uses, including changes from one nonconforming use to another, so long as the local zoning code specifically allows such use changes.

As required by these cases, Section 5.2 of the Bylaw specifically provides such protection, as follows:

> The Zoning Board of Appeals may award a special permit to change a nonconforming use in accordance with this Section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood.

The following section further specifies that:

> The following types of changes to nonconforming uses may be considered by the Zoning Board of Appeals: 1. Change or substantial extension of the use; 2. ***Change from one nonconforming use to another, less detrimental, nonconforming use***.

Bylaw § 5.2.1 (emphasis added).

Based on these provisions, the ZBA has the authority to allow the conversion of the pre-existing, nonconforming use of the Bali Hai Property from a restaurant to multi-family residential use (which is also nonconforming in the RA zoning district) if it finds that such a change would be less detrimental to the neighborhood.

Detriment to the Neighborhood

One of the central underlying premises of all zoning law is that different uses of property are more or less "intense" based on their effects on neighboring properties, and that uses of similar intensity are more appropriately situated in proximity to each other. Zoning law arose in the years following the Industrial Revolution, during which a lack of land use controls allowed landowners

to build things like railroads and factories in predominantly residential areas.[8] In an effort to protect residential neighbors from the harms generated by more "intense" uses, local towns and cities thus created zoning laws restricting where such uses could be located.

Uses of land are thus classified for zoning purposes into three primary groups: residential use, which is the least intense (and thus subject to the least regulation), commercial use, which is more intense (and thus subject to greater restrictions), and industrial use, which is the most intensive (and thus subject to strict regulation).[9] This fundamental premise goes back to the watershed 1926 decision in *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926), in which the United State Supreme Court first upheld local zoning regulations as constitutional restrictions on the use of property.

The question of "detriment" to the neighborhood is a highly fact-intensive inquiry that turns on the specific attributes of the existing use, the proposed use, and the neighborhood itself. As such, drawing bright-line rules as to what does or does not constitute a detriment proves to be challenging. Nonetheless, this firm is not aware of any case law where a change in use from commercial use to residential use was found to be a detriment to the neighborhood. Indeed, since the very nature of commercial use is that it is necessarily more intense than residential use, such a conclusion would seem to be unreasonable on its face.

The closest case to the circumstances presented by this application is *Murray v. Bd. of Appeals of Barnstable*, 22 Mass. App. Ct. 473 (1986), where the court upheld a Special Permit granted to a landowner seeking to convert a hotel (with a restaurant, bar, and on-site entertainment) into a multi-family apartment building. Under those circumstances, it was found that "the proposed use will not only *not* be substantially more detrimental or objectionable to the neighborhood than the present use, but will, in fact, bring about an *improvement* and *substantial upgrading* and will be more in keeping with the district's essentially residential character, and is therefore in keeping with the spirit and intent of the zoning by-law." *Murray*, 22 Mass. App. Ct. at 475 (emphasis added).

Similarly, here, it is clear that the proposed conversion of the Bali Hai Property from commercial restaurant use to use as a small multi-family apartment would be substantially less detrimental to the neighborhood than the current use of the Property. At present, the Bali Hai Property is deeply incongruous in a neighborhood that is otherwise dedicated primarily to residential use. Not only is it the only commercial building in the area, but the Property is taken up by a large parking lot encompassing most of the lot area, and its large, pole-mounted neon-light sign can be seen from a great distance away. That sign is to be abandoned and replaced with a small, tasteful monument sign.

The specific factors demonstrating that the proposed change of use would be less detrimental to the neighborhood are as follows:

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[8] A local example of the problems that this lack of regulation created is the Great Boston Molasses Flood of 1919, where an industrial accident in close proximity to a residential area resulted in 21 deaths and 150 injuries.

[9] There are other classes of land use (e.g., educational, agricultural, recreational, institutional/municipal, etc.), but residential, commercial, and industrial are the three primary focuses of zoning.

- Change in use from commercial to residential. *Murray*, 22 Mass. App. Ct. at 477-481 (1986); *Walker v. Bd. of Appeals of Harwich*, 388 Mass. 42, 53 (1983).
- Elimination of the existing dimensional nonconformity of the existing Bali Hai building. *Blasco*, 31 Mass. App. Ct. at 37.
- Replacement of the existing poor-condition building (including expansive parking lot and commercial sign) with a tasteful, residential structure more appropriate for the neighborhood. *Murray*, 22 Mass. App. Ct. at 475; *Coady v. Putnam*, 25 LCR 388 (Mass. Land Ct. June 22, 2017).
- Reduction in traffic. *Coady v. Putnam*, 25 LCR 388; *Cumberland Farms, Inc. v. Colman*, 13 LCR 608 (Mass. Land Ct. Dec. 20, 2005) (even an increase in traffic is not detrimental if local roads are adequate to handle it).
- Reduction in the number of curb cuts. *Cumberland Farms, Inc. v. Colman*, 13 LCR 608.
- Increased legal off-street parking for the local park. *Liska v. Wells*, 13 LCR 364 (Mass. Land Ct. June 30, 2005).
- Reduction of noise (caused by the general operation of the restaurant business, as well as frequent alcohol-related disturbances at the Property in recent years). *Cochran v. Roemer*, 287 Mass. 500, 507 (1934); *MS&G Lakeville Corp. v. Town of Lakeville*, 15 LCR 259 (Mass. Land Ct. June 1, 2007); *Fitch v. Sepucha*, 26 LCR 83 (Mass. Land Ct. Feb. 16, 2018).
- Elimination of the existing liquor license and on-site entertainment. *Murray*, 22 Mass. App. Ct. at 474-475.
- Replacement of existing commercial lighting with zoning-compliant, lower impact residential lighting. *Fitch*, 26 LCR 83.
- Creation of new vegetative screening. *Deignan v. Jussila*, 14 LCR 506 (Mass. Land Ct. Aug. 29, 2006).
- Replacement of the existing, nonconforming septic system with a new, conforming septic system that produces less effluent. *Coady v. Putnam*, 25 LCR 388 (reduction in septic load).
- Reduction in stormwater runoff and resulting pollutants. *Coady v. Putnam*, 25 LCR 388; *Powers v. Cunniff*, 16 LCR 305 (Mass. Land Ct. Apr. 30, 2008).
- Increased tax revenue. *Berkshire Cranwell L.P. v. Zoning Bd. of Appeals for Town of Lenox*, 12 LCR 153 (Mass. Land Ct. Apr. 30, 2004).
- Reduction in the amount of impervious surface on the Property. *Powers v. Cunniff*, 16 LCR 305.

Conclusion

In sum, the replacement of the Bali Hai restaurant with the proposed apartment complex would be a vast improvement for the neighborhood. As such, it qualifies for a Special Permit under Section 5.2.1 of the Lynnfield Zoning Bylaw as a "change from one nonconforming use to another, less detrimental, nonconforming use." I am pleased to review this memorandum with the Board at the upcoming continued hearing on the Project on August 6, 2018.

Exhibit A

Dimensional Requirement	Required	Existing Condition	Existing Compliance	Proposed Condition	Proposed Compliance
Lot Area (Min.) (Bylaw §4.1.2)	15,000 s/f	81,000+/- s/f	Yes	81,000+/- s/f	Yes
Lot Frontage (Min.) (Bylaw §4.1.2)	110 feet	514.6 feet, not including corner curve	Yes	514.6 feet, not including corner curve	Yes
Lot Coverage (Max.) (Bylaw §4.1.2)	35%	9.8%	Yes	17%	Yes
Setback to Street Center Line (Min.) (Bylaw §4.1.2)	50 feet	Moulton Dr.: >116.9 feet **Oak St.: 44.2 feet**	Yes *No*	Moulton Dr.: 132.4 feet Oak St.: 95.4 feet	Yes Yes
Front Yard (Min.) (Bylaw §4.1.2)	30 feet	Moulton Dr.: 116.9 feet **Oak St.: 24.2 feet**	Yes *No*	Moulton Dr.: 152.4 feet Oak St.: 115.4 feet	Yes Yes
Side Yard (Min.) (Bylaw §4.1.2)	15 feet	160.4 feet	Yes	18.9 feet	Yes
Rear Yard (Min.) (Bylaw §4.1.2)	20 feet	48.4 feet	Yes	20.5 feet	Yes
Building Height (Max.)	No Requirement[1]	1 Story <40 feet	Yes Yes	3 stories 34 feet	Yes Yes
Parking (Min. Spaces)	See Note 2	160 spaces	Yes	64 standard spaces plus 3 accessible spaces (not including 16 overflow parking spaces, to be dedicated for seasonal use for Little League baseball games, and at all other times to be used for guest parking)	Yes

[1] The previous version of the Bylaw, prior to its recodification in 2017, prescribed a maximum building height of 3 stories and 40 feet (subject to adjustment based on setbacks). However, this height requirement, was not carried forward in the recodified Bylaw. Rather, the only applicable height requirement pertains to "projections", such as chimneys, spires, and towers, which may not exceed 50 feet without authorization of the ZBA. In any event, both the existing Bali Hai building and the proposed apartment building fully comply with the previous version of the Bylaw's height requirement.

[2] Section 6.2.4 of the Bylaw sets forth a formula for determining required parking for restaurants, which is based either on square footage or the number of patron seats, whichever is greater. That formula would entail that the Bali Hai restaurant must provide at least 91 parking spaces based on its 273 seats. While the restaurant is grandfathered from this requirement, it fully complies with it.

The Bylaw does not contain any applicable minimum parking requirement for multifamily residential use. The Project has been designed with 64 standard spaces (2 per unit), plus 3 accessible spaces, as well as 16 additional overflow spaces, which will be dedicated for seasonal use for Little League baseball games, and at all other times to be used for guest parking. This parking ratio far exceeds the statewide standard of 1.5 per unit (total) that would have applied had this development been proposed under M.G.L. c. 40B.