

DESCHENES & FARRELL, P.C.

Attorneys at Law
515 Groton Road, Suite 204
Westford, MA 01886
Telephone: (978) 496-1177
Facsimile: (978) 577-6462

Douglas C. Deschenes
Kathryn Lorah Farrell
*Melissa E. Robbins**

**Admitted in MA and NH*

August 1, 2018

Littleton Planning Board
Attn: Maren Toohill
37 Shattuck Street
P.O. Box 1305
Littleton, MA 01460

RE: 245 Foster Street
Littleton, MA

Dear Maren and Members of the Board,

Please recall that this office represents G.S. Holdings, LLC, Douglas Shaw, Manager, regarding the proposed development of the property at 245 Foster Street, Littleton, MA. G.S. Holdings, LLC is proposing to develop a 35,000 square foot mixed use commercial building and a separate 150 vehicle parking facility on the property (hereinafter the "Project"). As part of the Project, we are proposing to utilize ten percent (10%) of the commercial building for retail use pursuant to Section 173-26A of the Littleton Zoning Bylaw and specifically applying Footnote 8. At the last meeting regarding the Project, the Board questioned whether I was interpreting said bylaw provision correctly and requested that I explain my position in writing for review by both the Board and Town Counsel. Therefore, please accept the following relative to my interpretation and proposed application of the Bylaw including Footnote 8.

The proposed Project is located in the Industrial A District ("IA"). Under Section 173-26A of the Littleton Zoning Bylaw, retail uses are not allowed ("N"), in the IA zone, except that Footnote 8 states:

"Except "P" if there is more than fifty thousand (50,000) square feet gross floor area in other nonresidential uses on the lot **OR** within two thousand (2000) feet of the boundary of the lot and the use is contained in a structure chiefly devoted to other permitted uses and the use occupies not more than ten percent (10%) of the structure's floor area." (emphasis added).

It is my position that the Project does in fact meet the three requirements of Section 173-26A, Footnote 8 and therefore the Project may utilize up to ten percent (10%) of the proposed structure for retail use.

1. The Project does not have more than fifty thousand (50,000) square feet of gross floor area in other non-residential uses on the lot (i.e. the building is only 35,000 square feet in size), however, there is significantly more than fifty thousand (50,000) square feet gross floor area in other non-residential uses **“within two thousand (2000) feet of the boundary of the lot.”** (emphasis added), (hereinafter the “Qualifying Adjacent Nonresidential Uses”).

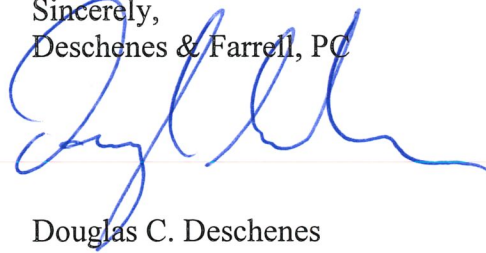
While it was stated by the Board that some of the buildings housing the Qualifying Adjacent Nonresidential Uses may also have ten percent (10%) retail use and therefore the entirety of the building should not be counted as Qualifying Adjacent Nonresidential Uses, there is nothing in the Bylaw to disqualify the remaining area in those building from being counted for purposes of the Project meeting Footnote 8. Again, the Bylaw merely requires that there be “fifty thousand (50,000) square feet gross floor area in other nonresidential uses.....within two thousand (2000) feet of the boundary of the lot”. Moreover, it is my understanding that even if any building containing a retail use were disqualified from being counted as Qualifying Adjacent Nonresidential Uses, there is still more than fifty thousand (50,000) square feet gross floor area in other nonresidential uses.....within two thousand (2000) feet of the boundary of the lot. Therefore, the first requirement of Footnote 8 is satisfied relative to the proposed Project, under either application, provided the applicant can prove the existence of 50,000 sq. ft. of Qualifying Adjacent Nonresidential Uses.

2. It has been presented on behalf of my client that the remaining ninety percent (90%) of the building will be “chiefly devoted to other permitted uses”. While negotiations are ongoing with potential tenants, the tenant types being pursued are all businesses that are allowed by right under the Littleton Zoning Bylaw. My client is keenly aware of the requirements and limitations as to allowed uses in the IA District. Therefore, the Project can and will satisfy the second requirement of Footnote 8.
3. Lastly, Footnote 8 limits the allowed retail use to 10% of the gross floor area of the building. As stated at the last public hearing for the Project, my client is proposing no more than ten percent (10%) of the building to be utilized for retail use, and therefore will satisfy the third requirement of Footnote 8.

In summary, while it is ultimately the Zoning Enforcement Officer who will determine whether the building and Project, if approved by the Planning Board, meets the requirements of Footnote 8 during the Building/Occupancy Permit processes, the Planning Board has questions as to whether I am interpreting Footnote 8 and its application correctly. Specifically, it has been questioned if and how Qualifying Adjacent Nonresidential Uses are counted and applied for purposes of Footnote 8. I have provided herein my analysis and justification for why I believe I am correctly interpreting the Bylaw and why the Project could qualify to have up to 10% of its gross floor area in retail use. I would respectfully ask the Board and Town Counsel to review my position and provide me direction so that I may counsel my client accordingly.

Please contact the undersigned with any comments or questions or if any further information is required. Thank you for your time and consideration.

Sincerely,
Deschenes & Farrell, PC

A handwritten signature in blue ink, appearing to read 'Douglas C. Deschenes', is written over the printed name. The signature is fluid and cursive.

Douglas C. Deschenes

DCD/