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PLANNING & COMMUNITY DEVELOPMENT
PLANNING DIVISION

Major Project Site Plan Special Permit No. 2022-04
January 17, 2023
BTE Development, LLC
40 & 50 Central Avenue

DECISION of the Planning Board (hereinafter referred to as the Board) on the petition of BTE Development, LLC, 13 Eaton Court, Wellesley, MA 02481, for property located at 40 & 50 Central Avenue, Needham, MA. Said property is located in the Neighborhood Business Zoning District. The property is shown on Assessors Plan No. 80 as Parcels 9 and 10 containing a total of 32,058 square feet.

This decision is in response to an application submitted to the Board on September 22, 2022, by the Petitioner for: (1) a Major Project Site Plan Special Permit under Section 7.4 of the Needham Zoning By-Law (hereinafter the By-Law); (2) a Special Permit under Section 1.4.6 of the By-Law for a change and extension of a lawful, pre-existing, non-conforming use, and the alteration and enlargement and reconstruction of a lawful, pre-existing, non-conforming structure; (3) a Special Permit under Section 3.2.3.2(g) of the By-Law for retail sales of ice cream, frozen yogurt and similar products for consumption on or off the premises, in a space less than two thousand (2,000) square feet (for Panella's Market); (4) a Special Permit under Section 3.2.3.2(h) of the By-Law for a take-out food counter as an accessory to a food retail or other non-consumptive retail establishment (for Panella's Market); (5) a Special Permit under Section 3.2.3.2(j) of the By-Law for more than one non-residential use on a lot where such uses are not detrimental to each other and are in compliance with all other requirements of this By-Law; (6) a Special Permit under Section 3.2.3.2(q) of the By-Law for apartment or multi-family dwelling use above the first floor where the first floor is used for a nonresidential use allowed in Section 3.2.3.1 or Section 3.2.3.2; (7) a Special Permit under Section 4.4.12(a) of the By-Law to increase the maximum floor area ratio to 0.7 and the building height to three (3) stories and forty (40) feet; (8) a Special Permit under Section 4.4.12(b) of the By-Law to reduce the minimum side setback adjoining a residential district to twenty (20) feet; (9) a Special Permit under Section 5.1.1.5 to waive strict adherence with the off-street parking requirements of Section 5.1.2 of the By-Law and the parking design requirements of Section 5.1.3 of the Zoning By-Law; and (10) a waiver of strict compliance with the following requirements of Section 7.4.4 of the By-Law, as necessary: (1) Requirement of subparagraph (b) concerning location of structures within 100 feet of property line; (2) Requirements of subparagraph (d) concerning cross and longitudinal views of the proposed structure(s) in relation to proposed site layout, together with an elevation line to show the relationship to the center of the street; and (3) Requirements of subparagraph (o) concerning projected traffic volume.

The requested Major Project Site Plan Special Permit, would, if granted, permit the Petitioner to demolish the two existing commercial buildings and construct a new mixed-use building with retail on the first floor and 15 total residential units on the second and third floors, with associated surface parking, driveways and other site improvements, all as further described in the application materials.

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted and mailed to the Petitioner, abutters and other parties in interest as required by law, the hearing was called to order by the Chairperson, Adam Block on Tuesday, November 15, 2022 at 8:15 p.m. in the Charles River Room, Needham Public Services Administration Building, 500 Dedham Avenue, Needham, MA, as well as by Zoom Web ID Number 880 4672 5264. The hearing was continued to Monday, December 5, 2022 at 7:05 p.m., in the Charles River Room, Needham Public Services Administration Building, 500 Dedham Avenue, Needham, MA, as well as by Zoom Web ID Number 880 4672 5264. Board members Adam Block, Jeanne S. McKnight, Paul S. Alpert, Natasha Espada and Artie Crocker were present throughout the November 15, 2022 proceedings. Board members Adam Block, Jeanne S. McKnight, Paul S. Alpert and Artie Crocker were present throughout the December 5, 2022 proceedings. Pursuant to Massachusetts General Laws Chapter 39, Section 23D, Adjudicatory Hearing, adopted by the Town of Needham in May of 2009, Ms. Espada examined all evidence received at the missed December 5, 2022 session and listened to an audio recording of the meeting. The record of the proceedings and the submission upon which this decision is based may be referred to in the office of the Town Clerk or the office of the Board.

Submitted for the Board's deliberation prior to the close of the public hearing were the following exhibits:

- Exhibit 1 - Application for Major Project Site Plan Review Special Permit No. 2022-04, dated September 22, 2022, with Addendum A.
- Exhibit 2 - Letter to the Planning Department from George Giunta Jr., Attorney, dated September 19, 2022.
- Exhibit 3 - Letter to Lee Newman, from Jeanne Ellen Bolio and Douglas E. Panella, dated September 19, 2022.
- Exhibit 4 - Letter to Lee Newman from Michael Panella, David Panella and Brian Panella, dated September 21, 2022.
- Exhibit 5 - Plan set entitled "40 & 50 Central Avenue, Needham, MA" consisting of 3 sheets, prepared by Verne T. Porter, 354 Elliot Street, Newton, MA: Sheet 1, Existing Conditions Site Plan, dated September 12, 2022; Sheet 2, Proposed Parking and Building Location, dated September 12, 2022; Sheet 3, Proposed Conditions Site Plan, dated September 12, 2022.
- Exhibit 6 - Plan set entitled "Central Avenue Development, 40-50 Central Avenue, Needham, MA" consisting of 5 sheets, prepared by MGD plus, 411 Lexington Street, Newton, MA and Ron Jarek, 487 Watertown Street, Newtonville, MA: Sheet 1, Sheet SP.00, entitled "Cover Page", dated September 18, 2022; Sheet 2, Sheet SP.01, entitled "Architectural Site Plan," dated September 18, 2022; Sheet 3, Sheet SP.02, entitled "Floor Plans," dated September 18, 2022; Sheet 4, Sheet SP.03, entitled "Elevations," dated September 18, 2022; Sheet 5, Sheet SP.04, entitled "3D Views," dated September 18, 2022.
- Exhibit 7 - Drainage Summary entitled "Proposed Mixed-Used Building, 40-50 Central Avenue, Needham, MA, prepared by Verne T. Porter, 354 Elliot Street, Newton, MA, dated September 12, 2020.

- Exhibit 8 - Plan prepared by MGD plus Design, 411 Lexington Street, Newton, MA, 04266, consisting of 2 sheets: Sheet SP.05, entitled “3D views 2,” dated September 18, 2022, revised October 30, 2022; Sheet SP.06, entitled “3D views 3,” dated September 18, 2022.
- Exhibit 9 - Plan prepared by MGD plus Design, 411 Lexington Street, Newton, MA, 04266, Sheet SP.03.2, entitled “Elevations 2,” dated September 18, 2022, revised October 30, 2022.
- Exhibit 10 - Plan prepared by MGD plus Design, 411 Lexington Street, Newton, MA, 04266, entitled “Central Avenue Development, 40-50 Central Avenue, Needham, MA”, Sheet SP.06, entitled “Landscape Plan,” dated October 6, 2022.
- Exhibit 11 - 4 Building Renderings, undated.
- Exhibit 12 - Transportation Impact Assessment, entitled “Proposed Residential Development 40-50 Central Avenue, Needham, MA”, prepared by Vanasse & Associates, inc., 35 New England Business Center Drive, Suite 140, Andover, MA 01810, dated November, 2022.
- Exhibit 13 - Design Review Board Memorandum to the Planning Board, dated November 7, 2022.
- Exhibit 14 - Letter to the Planning Department from George Giunta, Jr., dated November 29, 2022.
- Exhibit 15 - Letter to Lee Newman from Jeanne Ellen Bolio and Douglas E. Panella, dated November, 2022.
- Exhibit 16 - Letter to Lee Newman from Brian Panella, Robert Panella, Michael Panella, and David Panella, dated November 19, 2022.
- Exhibit 17 - The Michael J. Panella 1992 Trust, recorded in the Norfolk County Registry of Deeds, Book 11216, Page 641
- Exhibit 18 - Last Will and Testament of Helen J. Panella.
- Exhibit 19 - Letter from Anonymous Needham resident dated November 28, 2022.
- Exhibit 20 - Plan prepared by MGD plus Design, 411 Lexington Street, Newton, MA, 04266, entitled “Central Avenue Development, 40-50 Central Avenue, Needham, MA”, Sheet SP.07, entitled “Landscape Plan,” dated November 30, 2022, revised October 30, 2022 and December 2, 2022.
- Exhibit 21 - Letter to the Planning Department from George Giunta, Jr., dated November 30, 2022.
- Exhibit 22 - Interdepartmental Communication (IDC) to the Board from Chief John Schlittler, Needham Police Department, dated December 5, 2022; IDC to the Board from Thomas Ryder, Town Engineer, dated December 5, 2022; and IDC to the Board from Tara Gurge, Health Department, dated November 9, 2022.

Exhibits 1, 2, 5, 6, 7, 8, 9, 11, 12, 20 and 21 are referred to hereinafter as the Plan.

FINDINGS AND CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings, the Board found and concluded that:

- 1.1 The subject property is located in the Neighborhood Business Zoning District (NBD) at 40 & 50 Central Avenue, Needham, MA. The said property is shown on Needham Town Assessors Plan No. 80 as Parcels 9 and 10 containing a total of 32,058 square feet, with approximately 139.98 feet of frontage on Central Avenue and approximately 196.78 of frontage on Reservoir Avenue.
- 1.2 The Premises is currently fully developed, with one parcel occupied by a one-story commercial building and the other being occupied by a two-story commercial building, as well as associated parking and driveway areas. The one-story building at 40 Central Avenue is currently vacant, and the two-story building at 50 Central Avenue is currently occupied by Panella's Market on the first floor and office space on the second floor.
- 1.3 The Petitioner proposes to demolish both existing buildings and replace them with a single, new building, to be used for mixed use purposes. The new building will be three stories high and contain approximately 20,072 square feet of space, with retail on the first floor, and 15 residential units on the second and third floors. It is currently contemplated that one of the retail bays on the first floor will be occupied by Panella's Market. Three of the fifteen residential units will be affordable, as defined by the Zoning By-Law. The entire site will be redeveloped and in addition to the new building, landscaping and other site improvements will also be installed, as shown on the plans submitted herewith.
- 1.4 As indicated above, the proposed new building will be used for mixed purposes, including retail and residential, with one of the retail spaces intended for use by the current tenant, Panella's Market. Pursuant to Section 3.2.3.1 of the By-Law, certain retail uses are allowed by right in the NBD, specifically including a retail shop for the sale of convenience goods and a grocery store. In addition, pursuant to Section 3.2.3.2, retail sales of ice cream, frozen yogurt and similar products for consumption on or off the premises, a take-out food counter as an accessory to a food retail or other non-consumptive retail establishment, and more than one non-residential use on a lot are all allowable by special permit. Finally, pursuant to Section 3.2.3.2, apartment or multi-family dwelling use above the first floor is allowable by special permit, provided the first floor is used for a nonresidential use allowed in Section 3.2.3.1 or Section 3.2.3.2 and further provided that the proposed apartment or multi-family dwelling complies with the lot area per unit requirements for apartments in the A-1 district as detailed in Section 4.3, and as affected by the provisions of Section 6.12(b).¹

¹ The lot area per unit requirement for apartments in the A-1 district set forth in Section 4.3 is 18 units per acre. Whereas the Premises consists of 32,058 square feet, that equates to a maximum total of 13.25 units. However, Section 6.12(b) provides that "the minimum lot area per dwelling unit normally required in the A-1 zoning district (as applicable to the Neighborhood Business District), shall be reduced by that amount necessary to permit up to two additional units (one affordable unit and one market unit) on the lot over the number required in section 6.12(a) above. As a result, the maximum allowable number of units is 15, being 13 + 2.

- 1.5 The By-Law, Section 4.4.1 requires that the minimum lot area be 10,000 square feet and the minimum lot frontage be 80 feet. The proposed development contains approximately 32,058 square feet of area, with approximately 139.98 feet of frontage on Central Avenue and approximately 196.78 of frontage on Reservoir Avenue; and therefore complies with the minimum frontage and the minimum area requirements.
- 1.6 The By-Law, Section 4.4.4 requires a minimum front setback of 20 feet. The proposed building is to have a front setback of 22.5 feet from Central Avenue at its closest point. Therefore, the proposed new building complies with the applicable front setback requirements.
- 1.7 The By-Law, Section 4.4.2 (d) allows a maximum floor area ratio (FAR) of 0.5. However, pursuant to Section 4.4.12(a), the Planning Board may issue a special permit for mixed use buildings allowed by special permit under Subsection 3.2.3.2 (q) in the Neighborhood Business District to increase the FAR to .7. The FAR for the new building is .63. Therefore the proposed new building will comply with the applicable FAR requirement.
- 1.8 Pursuant to Section 4.4.3 the maximum height allowed as of right in the NBD is two and one-half (2 ½) stories, not to exceed thirty-five feet. However, pursuant to Section 4.4.12(a), the Planning Board may issue a special permit for mixed use buildings allowed by special permit under Subsection 3.2.3.2 (q) in the Neighborhood Business District to increase the maximum height to three stories and 40 feet. The proposed building is three stories and 39 feet high to the top of the elevator penthouse. As a result, the building will comply with the height limitations of the By-Law.
- 1.9 The By-Law, Section 4.4.5, further requires that no more than two driveways are allowed for every 150 feet of frontage, and two-way driveways of the kind proposed for the Premises must be no less than 18 feet wide and no more than 25 feet wide. Whereas only two, two-way driveways are proposed, and whereas each driveway opening is 20 feet wide, same will comply with the applicable driveway opening conditions of Section 4.4.5.
- 1.10 The By-Law, Section 4.4.8.4, requires that:

“no building or structure for a use not allowed in a residential district shall be placed within fifty (50) feet of a residential district boundary, and the ten feet closest to such boundary shall be suitable landscaped as specified at Section 4.4.8.5. The remainder of the setback may be used for an accessory use not including a building or structure.”

However, pursuant to Section 4.4.12(b), the Planning Board may issue a special permit for mixed use buildings allowed by special permit under Subsection 3.2.3.2 (q) in the Neighborhood Business District to reduce the minimum side and/or rear setback adjoining a residential district to twenty (20) feet provided said strip is suitably landscaped in accordance with the specifications in Section 4.4.8.5.

The proposed side yard setback adjoining the Single Residential B District to the northeast is 27.2 feet, and the setback area is proposed to be landscaped as required. Therefore, the building will comply with the applicable side-yard setback requirement.

1.11 Pursuant to Section 4.4.9 of the By-Law, first-floor commercial spaces are required to have individual entrances accessed from the exterior of the building. In addition, building entrances providing access to first and second-floor space must be available from one or more streets on which the building fronts and the primary building entrance must be from Central Avenue or Reservoir Street. Whereas the three commercial bays all have separate entrances on either Central Avenue or Reservoir Street, and whereas the main entrance to the residential space on the second and third floors is on Central Avenue, the requirements of Section 4.4.9 are met.

1.12 Total parking demand for the Premises, as redeveloped and used for retail purposes on the first floor and 15 residential units on the second and third floor (with two, one-bedroom affordable units) is 31 spaces, calculated as follows:

13 Residential Units @ 1.5 spaces / unit = 19.5 spaces = 20 spaces required
2 1-bedroom affordable unit @ 1 space / unit = 2 spaces required
2,542 SF Retail @ 1 space / 300 SF = 8.47 spaces = 9 spaces required
20 + 2 + 9 = 31 total spaces required

See Section 6.12(h) of the By-Law, which provides that: “For affordable units with not more than one bedroom, the minimum number of parking spaces under Section 5.1 shall be reduced to one space per unit”.

The foregoing is for the base building, and does not take into account the anticipated use of one of the retail spaces by the Panella’s Market. When such use is taken into account, the overall parking demand increases to 41 total spaces, calculated as follows:

13 Residential Units @ 1.5 spaces / unit = 19.5 spaces = 20 spaces required
2 1-bedroom affordable unit @ 1 space / unit = 2 spaces required
2,542 SF Retail @ 1 space / 300 SF = 8.47 spaces = 9 spaces required
1 Take-Out Station @ 10 spaces = 10 spaces required
20 + 2 + 9 + 10 = 41 total spaces required

There are a total of 28 parking spaces provided on site. In addition, six new on-street parking spaces, immediately adjacent to the Premises, are being proposed. However, pursuant to the By-Law, on-street may not be included in the parking calculation to determine compliance.

As a result, under both the base condition and with the Panella’s market taken into account, there is a shortfall of parking spaces, and a parking waiver is required. The waiver for the base condition is three spaces (31 required – 28 provided = 3), and taking the Panella’s Market use into account, the waiver is 13 spaces (41 required – 28 provided).

The Petitioner asserts that, in this instance, the requested waiver is appropriate. Under the base condition, the waiver is only for three spaces, and the Petitioner is proposing to add six on-street spaces; double the shortfall. So, while the on-street spaces may not be included in the compliance calculation, they will provide sufficient parking under the base condition.

The Petitioner plans to allocate each retail tenant one space for employee parking. A second employee may use street parking. If the retail tenant has more than two employees

on site, the tenant will need to find another method to get the additional employees to the site.

Finally, 22 of the required spaces are associated with the proposed residential use. While it is true that some workers have continued to work from home as the Covid-19 pandemic has eased, many have returned to their workplace. Moreover, over time, it is expected that an increasing number of people will shift back to the workplace. As a result, it is anticipated that at least several, if not most of the spaces required by the residential component will be vacant during the morning and mid-day periods when Panella's Market is expected to experience its peak demand.

- 1.13 The spaces as designed comply with all aspects of the Parking Plan and Design Requirements set forth at Section 5.1.3 of the By-Law except the following two, for which waivers are required and requested by the Petitioner under this Section: (1) The illumination proposed is limited to modest lights, primarily mounted on the building, which are expected to produce an illumination level of less than one foot candle in portions of the parking area, instead of the requirement of an illumination level of an average of one foot candle required pursuant to Section 5.1.3(a); (2) The By-Law Section 5.1.3(b) requires that parking spaces and maneuvering aisles shall be setback a minimum of twenty (20) feet from a front lot line or street right-of-way line. Whereas the first couple of parking spaces adjacent to the driveway off Reservoir Avenue, in the southwest corner of the parking lot, are less than 20 feet from Reservoir Street, a waiver from such provision has been requested.
- 1.14 The Petitioner has committed to installing solar panels on the roof to provide solar electricity to the building. All residential units will be completely electric, with high efficiency heat pumps, led lighting and low flow water fixtures. In addition, electric charging stations for eight vehicles will be provided and there will be bicycle storage inside the building as well as a bicycle rack outside. Finally, high density, high efficiency insulation will be used throughout.
- 1.15 Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight buffers and preservation of views, light and air has been assured. The Board finds that the mixed use of the premises for retail and residential purposes, as proposed, does not constitute a "seriously detrimental use" within the terms of the By-Law. Furthermore, the side of the premises adjacent to the residential district will be landscaped with over 20 feet of landscaping. And considering that the premises is bounded on the other side by a fully developed commercial property, the Petitioner asserts that no additional sound and sight buffers are required, and that views, light and air are not materially affected.
- 1.16 Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets has been assured. The driveway serving the parking area is of adequate width and in an appropriate location, and the building is accessed by a walkway.
- 1.17 The arrangement of parking and loading spaces is adequate, based on the layout and use of the site. Parking is arranged around the building and is readily accessible. The proposed mixed retail and residential use of the building is not expected to require any special or dedicated loading spaces.
- 1.18 Adequate methods of disposal of refuse and other wastes resulting from the uses of the site have been provided. The proposed mixed use of the Premises is not anticipated to

generate any significant wastes or trash. Nevertheless, it will be a requirement for the occupants of the building that all trash, waste and debris be removed on a regular basis, as necessary and appropriate. Furthermore, two areas, one in the southeast corner of the parking area and one in the southwest corner have been designated for a trash area and will be suitably enclosed.

- 1.19 The relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area are in compliance with other requirements of this By-law and have been adequately addressed by this project. There is no significant natural landscape to speak of in the vicinity of the premises. The property is bounded on one side by an existing residential dwelling and on the other side by a fully developed commercial property.
- 1.20 The Project will not have an adverse effect on the Town's resources, including the Town's water supply and distribution system, sewer collection and treatment, fire protection and streets. No significant impact to the Town's resources is proposed or anticipated. The use of the premises for retail and residential purposes is consistent with both other current uses in the NBD and the uses allowed pursuant to the By-Law.
- 1.21 Under Section 7.4 of the By-Law, a Major Project Site Plan Review Special Permit may be granted in the Neighborhood Business District, if the Board finds that the proposed development complies with the standards and criteria set forth in the provisions of the By-Law. On the basis of the above findings and conclusions, the Board finds that the proposed development Plan, as conditioned and limited herein for the site plan review, to be in harmony with the purposes and intent of the By-Law, to comply with all applicable By-Law requirements, to have minimal adverse impact and to have promoted a development which is harmonious with the surrounding area.
- 1.22 Under Section 3.2.3.2(g) of the By-Law, a Special Permit may be granted for retail sales of ice cream, frozen yogurt and similar products for consumption on or off the premises, in a space less than two thousand (2,000) square feet (for Panella's Market) in the Neighborhood Business District, provided the Board finds that the proposed use is in harmony with the general purposes and intent of the By-Law. On the basis of the above findings and conclusions, the Board finds the proposed development Plan, as conditioned and limited herein, to be in harmony with the general purposes and intent of the By-Law, to comply with all applicable By-Law requirements, and to not increase the detriment to the Town's and neighborhood's inherent use.
- 1.23 Under Section 3.2.3.2(h) of the By-Law, a Special Permit may be granted for a take-out food counter as an accessory to a food retail or other non-consumptive retail establishment (for Panella's Market) in the Neighborhood Business District, provided the Board finds that the proposed use is in harmony with the general purposes and intent of the By-Law. On the basis of the above findings and conclusions, the Board finds the proposed development Plan, as conditioned and limited herein, to be in harmony with the general purposes and intent of the By-Law, to comply with all applicable By-Law requirements, and to not increase the detriment to the Town's and neighborhood's inherent use.
- 1.24 Under Section 3.2.3.2(j) of the By-Law, a Special Permit may be granted for more than one non-residential use on a lot where such uses are not detrimental to each other and are in compliance with all other requirements of this By-Law in the Neighborhood Business District, provided the Board finds that the proposed use is in harmony with the general

purposes and intent of the By-Law. On the basis of the above findings and conclusions, the Board finds the proposed development Plan, as conditioned and limited herein, to be in harmony with the general purposes and intent of the By-Law, to comply with all applicable By-Law requirements, and to not increase the detriment to the Town's and neighborhood's inherent use.

- 1.25 Under Section 3.2.3.2(q) of the By-Law, a Special Permit may be granted for apartment or multi-family dwelling use above the first floor where the first floor is used for a nonresidential use allowed in Section 3.2.3.1 or Section 3.2.3.2 in the Neighborhood Business District, provided the Board finds that the proposed use is in harmony with the general purposes and intent of the By-Law. On the basis of the above findings and conclusions, the Board finds the proposed development Plan, as conditioned and limited herein, to be in harmony with the general purposes and intent of the By-Law, to comply with all applicable By-Law requirements, and to not increase the detriment to the Town's and neighborhood's inherent use.
- 1.26 Under Section 4.4.12(a) of the By-Law, a Special Permit may be granted to increase the maximum floor area ratio to 0.7 and the building height to three (3) stories and forty (40) feet in the Neighborhood Business District, provided the Board finds that the proposed use is in harmony with the general purposes and intent of the By-Law. On the basis of the above findings and conclusions, the Board finds the proposed development Plan, as conditioned and limited herein, to be in harmony with the general purposes and intent of the By-Law, to comply with all applicable By-Law requirements, and to not increase the detriment to the Town's and neighborhood's inherent use.
- 1.27 Under Section 4.4.12(b) of the By-Law, a Special Permit may be granted to reduce the minimum side setback adjoining a residential district to twenty (20) feet in the Neighborhood Business District, provided the Board finds that the proposed use is in harmony with the general purposes and intent of the By-Law. On the basis of the above findings and conclusions, the Board finds the proposed development Plan, as conditioned and limited herein, to be in harmony with the general purposes and intent of the By-Law, to comply with all applicable By-Law requirements, and to not increase the detriment to the Town's and neighborhood's inherent use.
- 1.28 Under Section 5.1.1.5 of the By-Law, a Special Permit to waive strict adherence with the requirements of Section 5.1.3 of the By-Law (Off-Street Parking Requirements) more specifically, in Sections 5.1.3(a), and 5.1.3(b), as further described in Section 1.13 above, may be granted provided the Board finds that owing to special and unique circumstances, the particular use, structure or lot does not warrant the application of certain design requirements. On the basis of the above findings and conclusions, the Board finds that there are special and unique circumstances justifying the waiver of the above-noted requirements, as conditioned and limited herein, which will also be consistent with the intent of the By-Law and which will not increase the detriment to the Town's and neighborhood's inherent use.

THEREFORE, the Board voted 5-0 to GRANT: (1) the requested Major Project Site Plan Review Special Permit under Section 7.4 of the Needham Zoning By-Law; (2) the requested Special Permit under Section 3.2.3.2(g) of the By-Law for retail sales of ice cream, frozen yogurt and similar products for consumption on or off the premises, in a space less than two thousand (2,000) square feet (for Panella's Market); (3) the requested Special Permit under Section 3.2.3.2(h) of the By-Law for a take-out food counter as an accessory to a food retail or other non-consumptive retail establishment (for Panella's Market); (4) the requested Special Permit under Section

3.2.3.2(j) of the By-Law for more than one non-residential use on a lot where such uses are not detrimental to each other and are in compliance with all other requirements of this By-Law; (5) the requested Special Permit under Section 3.2.3.2(q) of the By-Law for apartment or multi-family dwelling use above the first floor where the first floor is used for a nonresidential use allowed in Section 3.2.3.1 or Section 3.2.3.2; (6) the requested Special Permit under Section 4.4.12(a) of the By-Law to increase the maximum floor area ratio to 0.7 and the building height to three (3) stories and forty (40) feet; (7) the requested Special Permit under Section 4.4.12(b) of the By-Law to reduce the minimum side setback adjoining a residential district to twenty (20) feet; (8) the requested Special Permit under Section 5.1.1.5 to waive strict adherence with the off-street parking requirements of Section 5.1.2 of the By-Law and the parking design requirements of Section 5.1.3 of the Zoning By-Law; and (10) the requested waiver of strict compliance with the following requirements of Section 7.4.4 of the By-Law, as necessary: (1) Requirement of subparagraph (b) concerning location of structures within 100 feet of property line; and (2) Requirements of subparagraph (d) concerning cross and longitudinal views of the proposed structure(s) in relation to proposed site layout, together with an elevation line to show the relationship to the center of the street, as modified by this decision; subject to and with the benefit of the following Plan modifications, conditions and limitations.

PLAN MODIFICATIONS

Prior to the issuance of a building permit or the start of any construction on the site, the Petitioner shall cause the Plan to be revised to show the following additional, corrected, or modified information. The Building Commissioner shall not issue any building permit, nor shall he permit any construction activity on the site to begin on the site until and unless he finds that the Plan is revised to include the following additional corrected, or modified information. Except where otherwise provided, all such information shall be subject to the approval of the Building Inspector. Where approvals are required from persons other than the Building Inspector, the Petitioner shall be responsible for providing a written copy of such approvals to the Building Inspector before the Inspector shall issue any building permit or permit for any construction on the site. The Petitioner shall submit nine copies of the final Plans as approved for construction by the Building Inspector to the Board prior to the issuance of a Building Permit.

- 2.0 The Plan shall be modified to include the requirements and recommendations of the Board as set forth below. The modified plans shall be submitted to the Board for approval and endorsement.
- a) The “Parking Plan and Design Requirements” compliance table shall be added to the site plan and shall be consistent with the waivers requested under the Section 5.1.3 requirement.
 - b) The plan shall be revised to show a solar panel installation on the roof of the proposed building which revision shall also include submittal of a roofing plan.
 - c) The site plan shall be modified to show the trash dumpsters located at the southwest and southeast rear corners of the property both placed within a wooden fence enclosure consistent with the location and material detail provided on the landscape plan.
 - d) The site plan shall be modified to show the transformer located at the southwest corner of the property near Reservoir Street placed within a wooden fence enclosure consistent with the location and material detail provided on the landscape plan.
 - e) The site plan shall be modified to show the addition of four steps leading from the parking spaces at the south end of the proposed building to the walkway adjacent to the building consistent with the location and material detail provided on the landscape plan.

- f) The site plan shall be modified to show a 6-foot-high cedar stockade fence along the eastern property line consistent with the detail provided on the landscape plan.
- g) The site and landscaping plans shall be revised to note the retaining wall at a height of 4 feet.
- h) The plan shall be modified to show an indoor location for the bike racks.
- i) The plan shall be revised to show stop control signage and paint marks for the driveways onto Central and Reservoir roads.
- j) A water connection plan shall be provided to show sufficient water service size for the facility as well as a separate tap for fire service for the building.
- k) The plan be revised to shall show a separate service for the kitchen wastewater connected to an outside grease trap in accordance with the Board of Health and the Sewer Division's grease separation guidance, as applicable.

CONDITIONS

- 3.0 The following conditions of this approval shall be strictly adhered to. Failure to adhere to these conditions or to comply with all applicable laws and permit conditions shall give the Board the rights and remedies set forth in Section 3.43 hereof.
- 3.1 This permit is issued for a new mixed-use building with retail on the first floor and 15 total residential units on the second and third floors (three affordable), with associated surface parking, driveways and other site improvements. The building, parking areas, driveways, walkways, landscape areas, and other site and off-site features shall be constructed in accordance with the Plan, as modified by this decision. Any changes, revisions or modifications to the Plan, as modified by this decision, shall require approval by the Board.
- 3.2 The proposed building and support services shall contain the dimensions and shall be located on that portion of the locus exactly as shown on the Plan, as modified by this decision, and in accordance with the applicable dimensional requirements of the By-Law.
- 3.3 Prior to the issuance of a building permit the Petitioner shall prepare and shall file with the Board and the Norfolk County Registry of Deeds a plan which shows assessor's Plan 80, Parcels 9 and 10 merged, using customary surveyor's notation. There shall be no further subdivision of the lot except by amendment of this approval by the Board.
- 3.4 The building shall be used both for retail (first floor) and residential (second and third floors) purposes. Any changes, revisions or modifications to the Plan, as modified by this decision, shall require approval by the Board.
- 3.5 Except in the event that the property is condominiumized, all buildings and land constituting the property shall remain under a single ownership.
- 3.6 The waiver of parking requirements granted by this approval is contingent upon the project being used as a mixed-use development of 15 dwelling units, with three affordable units, and with 2,542 square feet of first floor retail space, and in accordance with the representations of the Petitioner, which formed the basis of the findings of fact and other conditions stated herein, as shown on the Plan. Any changes of use shall be permitted only by amendment of this Approval by the Board.
- 3.7 There shall be 3 affordable housing units in the project. The three affordable housing units in the project shall be as defined in Section 1.3 of the By-Law. Said units shall

comply with all applicable provisions of the Department of Housing and Community Development's (DHCD) Chapter 40B Guidelines, dated February 22, 2008, as amended, and shall be eligible for the Chapter 40B Subsidized Housing Inventory as "Local Action Units" under the DHCD Local Initiative Program. It shall be the Petitioner's responsibility to prepare any and all applications, exhibits, and supporting documentation that DHCD requires in order to approve the units for the Subsidized Housing Inventory and to record a DHCD-approved affordable housing restriction with the Norfolk Registry of Deeds or the Land Court. No Certificate of Occupancy shall be issued for the project until the Petitioner provides evidence that the restriction on the units has been recorded.

- 3.8 Subject to DHCD approval, the Petitioner shall set aside up to 70% of the affordable units as local preference units, i.e. offered first to Needham residents or persons with a connection to the Town, in accordance with a local preference policy determined by the Select Board consistent with DHCD directives and applicable state and federal laws. The Town will provide reasonable assistance to the Petitioner in designing an affirmative marketing plan for the Affordable Units. The Town may delegate oversight of the affirmative marketing plan and local preference selection procedures to another organization deemed appropriate by the Board to represent the Town interests. All costs associated with preparing and implementing the affirmative marketing plan and local preference procedures shall be paid by the Petitioner.
- 3.9 The Town of Needham intends to enter into an agreement with a person or entity selected by the Town Manager and approved by DHCD to monitor the Petitioner's compliance with the affordability restriction on an annual basis and to provide an annual report of its monitoring to the Town (the "Monitoring Agent"). The Petitioner shall pay for the cost of the Monitoring Agent pursuant to a separate agreement between the Town and the Petitioner. The Petitioner shall cooperate with the monitoring agent by providing all documentation necessary to demonstrate that the affordable housing units comply with Section 1.3 of the Zoning By-Law and this decision and are occupied by income-eligible households.
- 3.10 Sufficient parking shall be provided on the locus at all times in accordance with the Plan, as modified by this decision, and there shall be no parking of motor vehicles off the locus at any time except in designated legal on-street parking areas. The sales/leasing plan shall not allow the allocation of parking spaces to tenants or unit owners in excess of the available number.
- 3.11 Twenty-Eight (28) parking spaces shall be provided on the site at all times in accordance with the Plan, as modified by this decision. Additionally, six (6) parking spaces shall be constructed on the street. All off-street parking shall comply with the requirements of Section 5.1.3 of the By-Law, except as otherwise waived by this decision.
- 3.12 All required handicapped parking spaces shall be provided including above-grade signs at each space that include the international symbol of accessibility on a blue background with the words "Handicapped Parking Special Plate Required Unauthorized Vehicles May Be Removed At Owners Expense". The quantity & design of spaces, as well as the required signage shall comply with the M.S.B.C. 521 CMR Architectural Access Board Regulation and the Town of Needham General By-Laws, both as may be amended from time to time.

- 3.13 The Petitioner shall install solar panels on the roof to provide solar electricity to the building. All residential units shall be completely electric, with high efficiency heat pumps, LED lighting and low flow water fixtures. In addition, electric charging stations for eight vehicles shall be provided and there shall be bicycle storage inside the building as well as a bicycle rack outside. Finally, high density, high efficiency insulation shall be used throughout.
- 3.14 The mechanical equipment to be installed on the roof shall be designed and operated so as to comply with all applicable Federal, state and local regulations addressing sound attenuation to protect adjoining properties and the nearest inhabited residence from excessive noise, as defined in said regulations. The mechanical equipment shall also be installed and screened as far as practical to minimize the visibility of the mechanical equipment and emergency generator from Central Avenue and Reservoir Street. The Petitioner shall deliver to the Building Commission for review and approval plans and specifications of said mechanical equipment, including sound attenuation components, if necessary, together with Petitioner's certification to the Building Commissioner that said mechanical equipment has been designed such that when they are operated they will be in compliance with the regulations described above with respect to noise, and screened in accordance with the requirements described above.
- 3.15 Prior to project occupancy, an as-built plan of the mechanical equipment together with a sound level analysis prepared by an acoustical engineer (if, in the opinion of the Building Commissioner, available manufacturer's specifications are insufficient to demonstrate compliance with applicable noise standards) shall be submitted to the Building Commissioner. The sound analysis shall demonstrate compliance with all applicable Federal, state and local regulations addressing sound attenuation to protect adjoining properties and the nearest inhabited residence from excessive noise, as defined in said regulations.
- 3.16 The Petitioner is responsible for improving the crosswalk along the southern side of Central Avenue from the premises of Central Avenue to the island and from the island to the sidewalk, to the specifications of the Town Engineering Division and the Department of Public Works.
- 3.17 The Special Permit to conduct retail sales of ice cream, frozen yogurt and similar products for consumption on or off the premises and to have a take-out food counter as an accessory to a food retail or other non-consumptive retail establishment is hereby issued to Panella's Market, located at 50 Central Avenue, Needham, MA 02494, prospective lessee only, and may not be transferred, set over, or assigned by Panella's Market, to any other person or entity without the prior written approval of the Board following such notice and hearing, if any, as the Board, in its sole and exclusive discretion, shall deem due and sufficient.
- 3.18 All cooking facilities shall be properly vented so as not to create any disturbing odors. The Petitioner shall install and maintain an emission control system to remove smoke and greasy odors from kitchen emissions so that only clean air is exhausted in full compliance with federal and state requirements. There shall be provision for disposal of refuse that shall be removed on a timely basis.
- 3.19 The Petitioner shall secure from the Needham Department of Public Works a Sewer Connection Permit or impact fee, if and to the extent applicable.

- 3.20 The Petitioner shall secure from the Needham Department of Public Works a Street Opening Permit, if and to the extent applicable.
- 3.21 The Petitioner shall seal all abandoned drainage connections and other drainage connections where the developer cannot identify the sources of the discharges. The Petitioner shall connect the sanitary sewer line only to known sources. All sources that cannot be identified shall be disconnected and properly sealed.
- 3.22 The construction, operation and maintenance of the subsurface infiltration facility, on-site catch basins and pavement areas, shall conform to the requirements outlined in the EPA's Memorandum of Understanding signed by the Needham Board of Selectmen.
- 3.23 The Storm Water Management Policy form shall be submitted to the Town of Needham signed and stamped and shall include construction mitigation and an operation and maintenance plan as described in the policy.
- 3.24 The Petitioner shall comply with the Public Outreach & Education and Public Participation & Involvement control measures required under NPDES. The Petitioner shall submit a letter to the DPW identifying the measures selected and dates by which the measures will be completed.
- 3.25 The Petitioner shall provide a 6-foot-high cedar privacy fence, along the northeastern edge of the property, as shown on the plan.
- 3.26 All solid waste shall be removed from the site by a private contractor, as and when necessary. Snow shall also be removed or plowed by private contractor, as and when necessary. All snow shall be removed or plowed such that the total number and size of parking spaces are not reduced.
- 3.27 All commercial deliveries and trash pick-up shall occur only between the hours of 8:30 a.m. and 6:00 p.m., Monday through Saturday, not at all on Sundays and holidays. All trash receptacles and the one transformer shall be located at the rear of the property as shown on the Plan and shall be screened by wooden fencing as shown on the Plan. Additional trash receptacles shall be provided if required and the area shall be kept free of litter from the operations at the site. The dumpster shall be emptied as needed, cleaned and maintained to meet Board of Health Standards.
- 3.28 The Petitioner shall create a pest management program and will maintain this program on an ongoing basis and, as needed, with the guidance of the Public Health Division.
- 3.29 All lights shall be shielded and adjusted during the evening hours to prevent any annoyance to the neighbors. The Petitioner shall utilize the exterior lighting located on the exterior of the building to shine down and provide basic and adequate security. All lights shall be shielded and adjusted during the evening hours to prevent any annoyance to the neighbors. The Petitioner shall adjust its parking lights during the night and early morning. Between the hours of 10:00 p.m. and 11:00 p.m., the Petitioner shall shut off most of the parking lot lights using the lights on the building to shine down and provide basic security. The building lights shall be set at a low light level to prevent any annoyance to the neighbors.
- 3.30 The maintenance of landscaping, as shown on the Plan, as modified by this decision, shall be the responsibility of the Petitioner.

- 3.31 Any portions of the sidewalks located on Reservoir Street and Central Avenue shall be built to Town of Needham Specifications.
- 3.32 In constructing and operating the proposed building on the locus pursuant to this Special Permit, due diligence be exercised, and reasonable efforts be made at all times to avoid damage to the surrounding areas or adverse impact on the environment.
- 3.33 Excavation material and debris, other than rock used for walls and ornamental purposes and fill suitable for placement elsewhere on the site, shall be removed from the site.
- 3.34 All construction staging shall be on-site. No construction parking shall be on public streets. Construction parking shall be all on site or a combination of on-site and off-site parking at locations in which the Petitioner can make suitable arrangements. Construction staging plans shall be included in the final construction documents prior to the filing of a Building Permit and shall be subject to the review and approval of the Building Inspector.
- 3.35 The following interim safeguards shall be implemented during construction:
- a. The hours of construction shall be 7:00 a.m. to 5:00 p.m. Monday through Saturday.
 - b. The Petitioner's contractor shall provide temporary security chain-link or similar type fencing around the portions of the project site, which require excavation or otherwise pose a danger to public safety.
 - c. The Petitioner's contractor shall designate a person who shall be responsible for the construction process. That person shall be identified to the Police Department, the Department of Public Works, the Building Commissioner and the abutters and shall be contacted if problems arise during the construction process. The designee shall also be responsible for assuring that truck traffic and the delivery of construction material does not interfere with or endanger traffic flow on Central Avenue.
 - d. The Petitioner shall take appropriate steps to minimize, to the maximum extent feasible, dust generated by the construction including, but not limited to, requiring subcontractors to place covers over open trucks transporting construction debris and keeping Reservoir Street and Central Avenue clean of dirt and debris and watering appropriate portions of the construction site from time to time as may be required.
- 3.36 No building permit shall be issued in pursuance of the Special Permit and Site Plan Approval until:
- a. The final plans shall be in conformity with those approved by the Board, and a statement certifying such approval shall have been filed by this Board with the Building Commissioner.
 - b. A construction management and staging plan shall have been submitted to the Police Chief and Building Inspector for their review and approval.
 - c. The Petitioner shall have submitted a letter to the DPW identifying the measures selected and dates by which the NPDES requirements outlined in Section 3.24 of this decision will be completed.

d. The Petitioner shall have delivered to the Building Commissioner for review and approval plans and specifications for the mechanical equipment, including sound attenuation components as described in paragraph 3.14 of this Decision.

e. The Petitioner shall have prepared and filed with the Board and the Norfolk County Registry of Deeds a plan which shows assessor's Plan 80, Parcels 9 and 10 merged, using customary surveyor's notation.

3.37 No building or structure, or portion thereof, subject to this Special Permit and Site Plan Approval shall be occupied until:

a. An as-built plan, supplied by the engineer of record certifying that the on-site and off-site project improvements were built according to the approved documents, has been submitted to the Board and Department of Public Works. The as-built plan shall show the building, all finished grades and final construction details of the driveways, parking areas, drainage systems, utility installations, and sidewalk and curbing improvements on-site and off-site, in their true relationship to the lot lines. In addition to the engineer of record, said plan shall be certified by a Massachusetts Registered Land Surveyor.

b. There shall be filed with the Building Inspector and Board a statement by the Department of Public Works certifying that the finished grades and final construction details of the driveways, parking areas, drainage systems, utility installations, and sidewalks and curbing improvements on-site and off-site, have been constructed to the standards of the Town of Needham Department of Public Works and in accordance with the approved Plan.

c. There shall be filed with the Board and Building Inspector a Final Construction Control Document signed by a registered architect upon completion of construction.

d. There shall be filed with the Board and Building Inspector an as-built Landscaping Plan and As-Built Lighting Plan showing the final location, number and type of plant material, final landscape features, parking areas, and lighting installations. Said plan shall be prepared by the landscape architect of record and shall include a certification that such improvements were completed according to the approved documents.

e. An as-built plan supplied by the engineer of record certifying that the off-site streetscape improvements were completed according to the approved documents has been submitted to and approved by the Board and Department of Public Works for the Project. There shall be filed with the Building Inspector a statement by the Board approving the final off-site streetscape improvements for the Project.

f. The Petitioner shall have filed an as-built plan of the mechanical equipment and a sound level analysis prepared by an acoustical engineer as described in paragraph 3.15 of this Decision.

g. The Planning Board and Building Inspector shall have received a copy of the recorded DHCD-approved affordable housing restriction as described in paragraph 3.7, for the project.

h. The Petitioner shall have installed and made operational the solar systems as described in paragraph 3.13 of this Decision.

- i. The petitioner shall have constructed the crosswalk along Central Avenue from the premises to the island, and from the island to the sidewalk, as described in paragraph 3.16 of this Decision.
 - j. Notwithstanding the provisions of Sections a, b, d and i hereof, the Building Inspector may issue one or more certificates for temporary occupancy of all or portions of the buildings prior to the installation of final landscaping and other site features, provided that the Petitioner shall have first filed with the Board surety in an amount not less than 135% of the value of the aforementioned remaining landscaping or other work to secure installation of such landscaping and other site and construction features.
- 3.38 In addition to the provisions of this approval, the Petitioner must comply with all requirements of all state, federal, and local boards, commissions or other agencies, including, but not limited to, the Board of Selectmen, Building Inspector, Fire Department, Department of Public Works, Conservation Commission, Police Department, and Board of Health.
- 3.39 Any blasting conducted at the property shall require approval by the Needham Fire Department in accordance with Massachusetts Comprehensive Fire Safety Code, 527 CMR 1.00.
- 3.40 The building or structure authorized for construction by this permit shall not be occupied or used, and no activity except the construction activity authorized by this permit shall be conducted within said area until a Certificate of Occupancy and Use or a Certificate of Temporary Occupancy and Use has been issued by the Building Commissioner.
- 3.41 The Petitioner, by accepting this permit decision, warrants that the Petitioner has included all relevant documentation, reports, and information available to the Petitioner in the application submitted, that this information is true and valid to the best of the Petitioner's knowledge.
- 3.42 The Petitioner shall implement the following maintenance plan:
- a. Parking lot sweeping - sweep twice per year; once in spring after snowmelt, and early fall.
 - b. Catch basin cleaning - inspect basins twice per year; in late spring and fall. Clean basins in spring.
 - c. Oil/grit separators - inspect bi-monthly and clean four times per year of all oil and grit.
- 3.43 Violation of any of the conditions of this decision shall be grounds for revocation of any building permit or certificate of occupancy granted hereunder as follows: In the case of violation of any conditions of this decision, the Town will notify the owner of such violation and give the owner reasonable time, not to exceed thirty (30) days, to cure the violation. If, at the end of said thirty (30) day period, the Petitioner has not cured the violation, or in the case of violations requiring more than thirty (30) days to cure, has not commenced the cure and prosecuted the cure continuously, the permit granting authority may, after notice to the Petitioner, conduct a hearing in order to determine whether the failure to abide by the conditions contained herein should result in a recommendation to the Building Inspector to revoke any building permit or certificate of occupancy granted hereunder. This provision is not intended to limit or curtail the Town's other remedies to

enforce compliance with the conditions of this decision including, without limitation, by an action for injunctive relief before any court of competent jurisdiction. The Petitioner agrees to reimburse the Town for its reasonable costs in connection with the enforcement of the conditions of this decision if the Town prevails in such enforcement action.

LIMITATIONS

- 4.0 The authority granted to the Petitioner by this permit is limited as follows:
- 4.1 This permit applies only to the site and off-site improvements, which are the subject of this petition. All construction to be conducted on-site and off-site shall be conducted in accordance with the terms of this permit and shall be limited to the improvements on the Plan, as modified by this decision.
- 4.2 There shall be no further development of this site without further site plan approval as required under Section 7.4 of the By-Law. The Board, in accordance with M.G.L., Ch. 40A, S.9 and said Section 7.4, hereby retains jurisdiction to (after hearing) modify and/or amend the conditions to, or otherwise modify, amend or supplement, this decision and to take other action necessary to determine and ensure compliance with the decision.
- 4.3 This decision applies only to the requested Special Permits and Site Plan Review. Other permits or approvals required by the By-Law, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.
- 4.4 The conditions contained within this decision are limited to this specific application and are made without prejudice for any further modification or amendment.
- 4.5 No approval of any indicated signs or advertising devices is implied by this decision.
- 4.6 The foregoing restrictions are stated for the purpose of emphasizing their importance but are not intended to be all-inclusive or to negate the remainder of the By-Law.
- 4.7 This Site Plan Special Permit shall lapse on January 17, 2025, if substantial use thereof has not sooner commenced, except for good cause. Any requests for an extension of the time limits set forth herein must be in writing to the Board at least 30 days prior to January 17, 2025. The Board herein reserves its rights and powers to grant or deny such extension without a public hearing. The Board, however, shall not grant an extension as herein provided except for good cause.
- 4.8 This decision shall be recorded in the Norfolk District Registry of Deeds and shall not become effective until the Petitioner has delivered a certified copy of the document to the Board. In accordance with G.L. Chapter 40A, Section 11, this Major Site Plan Special Permit shall not take effect until a copy of this decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and either that no appeal has been filed or the appeal has been filed within such time is recorded in the Norfolk District Registry of Deeds and is indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at the risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The provisions of this Special Permit shall be binding upon every owner or owner of the lots and the executors, administrators, heirs, successors and assigns of such owners, and the obligations and restrictions herein set forth shall run with the land, as shown of the Plan, as modified by this decision, in full force and effect for the benefit of and enforceable by the Town of Needham.

Any person aggrieved by this decision may appeal pursuant to General Laws, Chapter 40A, Section 17, within twenty (20) days after filing of this decision with the Needham Town Clerk.

