NEEDHAM PLANNING BOARD
Tuesday November 19, 2024
7:00 p.m.

Charles River Room
Public Services Administration Building, 500 Dedham Avenue
AND
Virtual Meeting using Zoom
Meeting ID: **880 4672 5264**
(Instructions for accessing below)

To view and participate in this virtual meeting on your phone, download the "Zoom Cloud Meetings" app in any app store or at www.zoom.us. At the above date and time, click on "Join a Meeting" and enter the following Meeting ID: 880 4672 5264

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Direct Link to meeting: https://us02web.zoom.us/j/88046725264

1. Update: MBTA Communities Act Zoning Referendum
2. Decision: Definitive Subdivision: 40 Highland Ave, LLC, 435E Dedham Street Newton, MA 02459, Petitioner, (Property located at 40 Highland Avenue and 14-16 Riverside Street, Needham, MA). Regarding request to subdivide the Premises into three building lots, two of which will be used for residential purposes, having frontage on the new road, and the third of which will continue to be used for commercial purposes.
3. Heather Lane Definitive Subdivision and Heather Lane Extension Definitive Subdivision/Residential Compound Special Permit Bond Reduction.
4. Review of Planning Board Goals.
5. Vote on Large House Review (LHR) Committee appointments.
6. Board of Appeals – November 20, 2024.
7. Minutes.
8. Report from Planning Director and Board members.
9. Correspondence.

(Items for which a specific time has not been assigned may be taken out of order.)

Select Board
TOWN OF NEEDHAM
AGENDA FACT SHEET

MEETING DATE: 11/12/2024

Agenda Item	MBTA Communities Act Zoning Referendum
Presenter(s)	Kate Fitzpatrick, Town Manager Katie King, Deputy Town Manager Chris Heep, Town Counsel

1.	**BRIEF DESCRIPTION OF TOPIC TO BE DISCUSSED**

The Town Manager, Deputy Town Manager, and Town Counsel will update the Board on procedures relating to the potential referendum on the action of Town Meeting on Articles 8, 9, 10 and 11 - the Base Compliance Plan and the Neighborhood Housing Plan.

2.	**VOTE REQUIRED BY SELECT BOARD**

N/A – Discussion Only

3.	**BACK UP INFORMATION ATTACHED**

a. Memorandum to the Board from the Town Manager and Deputy Town Manager dated November 8, 2024
b. Section 13 of the Town Charter
c. Memorandum from Town Counsel re: Quantum of Vote on Referendum Petition dated November 1, 2024
d. Memorandum from Town Counsel re: Political Activity and Ballot Questions
e. Memorandum from the Town Manager and Deputy Town Manager re: funding at risk for non-compliant communities dated November 6, 2024

T O W N O F N E E D H A M
TOWN HALL
Needham, MA 02492-2669

TEL: (781) 455-7500
FAX: (781) 449-4569

Office of the
TOWN MANAGER

TO:	Select Board
FROM:	Kate Fitzpatrick, Town Manager
	Katie King, Deputy Town Manager
CC:	Dave Davison, Deputy Town Manger/Director of Finance
	Louise Miller, Town Clerk
	Michael Fee, Town Moderator
	Chris Heep, Town Counsel
DATE:	November 8, 2024
RE:	Potential Referendum Questions

The group known as Needham Residents for Thoughtful Zoning have indicated that they are seeking the requisite signatures to invoke the referendum provisions of the Town Charter to overturn Town Meeting action on Articles 8 and 9, inclusive of the amendments contained in Articles 10 and 11, the MBTA Communities Act Base Compliance and Neighborhood Housing Plan. Information about the zoning is available on the Town's website.

Process

In accordance with Section 13 of the Town Charter, petitioners have 20 days (exclusive of Sundays and legal holidays) to file a petition signed by not less than 15 per cent of the registered voters of the Town (approximately 3,764). The petition is due on or before November 15, 2024.

If a qualified petition is submitted, the Select Board has 10 days (inclusive of Sundays and legal holidays) to meet and call for a special election. If the petition is filed on the last day, the Select Board has until November 25, 2024 to meet and call for an election.

Section 13 of the Charter further states that the special election must be held within 14 days (exclusive of Sundays and legal holidays) of the vote of the Select Board. However, M.G.L. c. 54 section 42C states in part that "(n)otwithstanding the provisions of any general or special law to the contrary establishing a later time, a city or town clerk shall not print on a city or town election ballot any question to the voters for which he receives final written notice after the thirty-fifth day before such election." Because the Town Charter does establish a later time for printing the ballot (that is, a date closer than 35 days to an election), the special election must be held after the 35th day of the notice of ballot question to the Town Clerk. The Elections Division of the Secretary of the Commonwealth's Office has confirmed that the Town must follow the timeline provided in M.G.L. c.54 section 42C even though the Charter calls for a shorter timeline.

Special Election

Given the forgoing assumptions, the earliest the special election would be held is during January.

In accordance with Section 13, the ballot question must include the same language and form as the motion that was adopted by Town Meeting. Given the number of pages occupied by Articles 8, 9, 10 and 11 in the warrant, printing the full text on the ballot form would cause it to be impracticably long. Therefore, we expect that the ballot form will contain a brief statement of the question to be voted, and that the full text of Town Meeting's action on Articles 8, 9, 10 and 11 will be reproduced in a separate, free-standing addendum to the ballot form. The ballot question itself is expected to read along the following lines: "Shall the Town vote to amend the Needham Zoning By-Law as set forth in Articles 8 and 9 of the Warrant of the October 21, 2024 Special Town Meeting, as amended to include those additional amendments set forth in Articles 10 and 11 of said warrant?" The approach of printing the text of Town Meeting's action in an addendum to the ballot form was suggested by the Elections Division.

At least 20% of the registered voters in Town must vote "no", and the "no" votes must outnumber the "yes" votes, for the referendum petition to successfully undo the action of Town Meeting in adopting the zoning. (See Memo from Town Counsel as Attachment B).

Special Town Meeting

If the zoning is overturned at the ballot, the Select Board and Planning Board may determine that a special town meeting is appropriate to achieve compliance with the Act. We are working with Counsel to determine the steps necessary to ensure compliance with State law with respect to the Planning Board process. M.G.L. c.40A, §5 states that zoning that has been unfavorably acted upon cannot be brought back to Town Meeting for two years, "unless the adoption of such proposed… by-law is recommended in the final report of the Planning Board." Therefore, a new Planning Board hearing and favorable final report would need to precede any special town meeting. It is likely that a special town meeting could occur in late February, depending on the date of the special election (if any).

Historical Context

We have identified an instance in which petitioners filed to change the effect of a Town Meeting vote under the current version of Section 13 of the Charter (it was amended in the mid-1970's).

In 1979, Town Meeting voted to move the North Hill property into the A-2 Zoning District. A petition was filed to repeal the zoning and a special election was held on March 26, 1979 - 35% of registered voters (6,374 of 18,211) cast ballots. The "No" vote was in the majority with 3,530 votes, but this did not meet the 20% threshold of 3,642 and the referendum therefore failed to repeal the action of Town Meeting.

Attachments

a. Section 13 of the Town Charter
b. Memorandum from Town Counsel re: Quantum of Vote on Referendum Petition dated November 1, 2024
c. Memorandum from Town Counsel re: Political Activity and Ballot Questions

Attachment A
Needham Town Charter
Section 13

Section 13. Referenda on Representative Town Meeting Action. No final vote of a town meeting passing a measure under any article in the warrant, except a vote to adjourn or dissolve or a vote appropriating money for the payment of notes or bonds of the town and interest thereon becoming due within the current fiscal year or a vote for the temporary borrowing of money in anticipation of revenue or a vote declared by preamble by a 2/3 vote of the town meeting members present and voting thereon to be an emergency measure necessary for the immediate preservation of the peace, health, safety, or convenience of the town shall be operative until after the expiration of 20 days, not including Sundays and legal holidays, from the dissolution of the town meeting.

If within that 20-day period a referendum petition, signed by not less than 15 per cent of the registered voters of the town and containing their names and addresses as the same appear on the list of registered voters, is filed with the select board requesting that the measure passed by any such vote which has not become operative as aforesaid be submitted to the voters of the town at large, then the operation of such vote shall be further suspended pending its determination as hereinafter provided and the select board, within 10 days after the filing of the referendum petition, shall call a special meeting which shall be held within 14 days after issuing the call to present to the voters at large the measure so involved; provided, however, that the 14-day period shall not include Sundays and legal holidays or any day between the first Wednesday in July and the first Wednesday in September immediately following as no such special meetings shall be held between the first Wednesday in July and the first Wednesday in September.

All votes on any measure so submitted shall be taken by ballot and the measure so submitted shall be stated upon the ballot in the same language and form as the motion was adopted by the town meeting, as appearing in the records of the town meeting. The checklist shall be used in the same manner as in the election of town officers. If a majority of the registered voters of the town voting thereon and at least 20 per cent of all the registered voters shall vote in the negative, the action of the town meeting in passing the measure that was the subject of the referendum petition shall be null and void, otherwise it shall take effect immediately upon the declaration by the select board of the vote upon the referendum or at such later date as may be specified by the vote of the town meeting. 5 If a referendum petition is not filed within the 20-day period, the vote of the town meeting passing the measure shall become effective on the expiration of that period or at such later date as may be specified in the vote passing the measure.

Harrington Heep

Christopher H. Heep
d: 617.804.2422
cheep@harringtonheep.com

MEMORANDUM

TO:	Select Board
CC:	Kate Fitzpatrick, Town Manager Katie King, Deputy Town Manager, Dave Davison, Deputy Town Manager Louise Miller, Town Clerk
FROM:	Christopher Heep, Town Counsel
SUBJECT:	Quantum of Vote on Referendum Petition
DATE:	November 1, 2024

Section 13 of the Town Charter provides that upon the filing of a referendum petition bearing the requisite number of qualified signatures, a final vote of Town Meeting passing a measure under an article shall be submitted to the voters at large. Section 13, third par. states as follows:

> All votes on any measure so submitted shall be taken by ballot and the measure so submitted shall be stated upon the ballot in the same language and form as the motion was adopted by the town meeting, as appearing in the records of the town meeting. The checklist shall be used in the same manner as in the election of town officers. If a majority of the registered voters of the town voting thereon and at least 20 per cent of all the registered voters shall vote in the negative, the action of the town meeting in passing the measure that was the subject of the referendum petition shall be null and void, otherwise it shall take effect immediately upon the declaration by the select board of the vote upon the referendum or at such later date as may be specified by the vote of the town meeting.

As noted above, Section 13 requires that the question be stated on the ballot "in the same language and form as the motion was adopted by" Town Meeting. When the question is framed in this manner, voters who wish to affirm the action of Town Meeting would vote "yes" on the ballot and voters who wish to render the action of Town Meeting null and void would vote "no" on the ballot.

Based on the language of Section 13, in order for the voters at large to render the challenged Town Meeting action null and void the "no" votes must:

1. Carry the majority vote among those voting at the ballot; and
2. Represent at least 20% of the registered voters in Town.

Stated differently, at least 20% of the registered voters in Town must vote "no", and the "no" votes must outnumber the "yes" votes, for a referendum petition to successfully undo the action of Town Meeting.

Harrington Heep

Christopher H. Heep
d: 617.804.2422
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MEMORANDUM

TO:	Select Board
CC:	Kate Fitzpatrick, Town Manager
	Katie King, Deputy Town Manager, Dave Davison, Deputy Town Manager
FROM:	Christopher Heep, Town Counsel
SUBJECT:	Political Activity and Ballot Questions
DATE:	November 1, 2024

In anticipation of the possible filing of a referendum petition challenging the Town Meeting action under Articles 8 and 9 of the October 21, 2024 Special Town Meeting Warrant, the Select Board should be aware of several limitations on its ability, and the ability of the individual Members, to act in support or opposition to a ballot question.

M.G.L. c.268A, §23(b)(2) states as follows:

> No current officer or employee of a…municipal agency shall knowingly, or with reason to know…(ii) use or attempt to use such official position to secure for such officer, employee or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

The State Ethics Commission has interpreted §23(b)(2) to limit the manner in which elected boards and individual elected officials may engage in political activity related to ballot questions. The State Ethics Commission has published detailed guidance on how this section applies in various circumstances. See State Ethics Commission Advisory 11-1: Public Employee Political Activity. For present purposes, the following are the most important rules for the Select Board to keep in mind.

The Select Board may do any of the following:

- Discuss a ballot question at its own meetings.
- Discuss a ballot question at informational meetings sponsored by an outside group.
- Invite ballot question committees to address its meetings, provided that invitations are made in accordance with a policy of equal access for all viewpoints.
- Vote to take a position on a ballot question.
- Issue an official statement reporting the Board's position on a ballot question; and
- Communicate the Board's official position, using any means normally employed in other circumstances to communicate a Board action (such as posting statements on the Town website, posting the video of the meeting, and publishing minutes of the meeting).

- Use public resources to inform the public about a ballot question, as opposed to using public resources for purposes of advocacy.

The Select Board may not do any of the following:

- Sign a communication advocating in support of, or in opposition to, a ballot question on behalf of the Select Board, unless the issuance of such statement is permitted as outlined above.
- Use public resources to distribute communications for purposes of advocacy. This would include a mass mailing, placing an advertisement in the paper, or distributing to voters, directly or indirectly, a flyer concerning a ballot question.

The individual Select Board Members may do any of the following:

- State their viewpoints and positions on a ballot question.
- Advocate in support of, or in opposition to, a ballot question.
- Identify themselves by their individual official title ("Select Board Member") on a communication supporting or opposing the ballot question.

The individual Select Board Members may not do any of the following:

- Use public resources to send communications advocating support of, or opposition to, a ballot question. This includes using your "needhamma.gov" email address to send out communications supporting or opposing a ballot question. Therefore, please send any such communications from a personal account.
- Solicit a vote on a ballot question, directly or indirectly, where such a solicitation is inherently coercive. A solicitation is inherently coercive if it is directed by a public employee at their subordinate, persons doing business with or having a matter pending before their public agency, or anyone subject to their agency's authority.

Please note that the ability to engage in election-related activity varies depending on the position held by a particular municipal employee. This memorandum is directed to the Select Board and does not cover non-elected employees in Town, including professional staff and appointed board and committee members. Similarly, the letter is limited to the ability of Select Board Members to participate in activities related to a ballot question, and does not cover other types of election related activity (such as election of political candidates).

If you have any questions, or if I can provide any additional information, please let me know.

MEMORANDUM

TO:	Needham Select Board
FROM:	Kate Fitzpatrick, Town Manager
	Katie King, Deputy Town Manager
CC:	David Davison, Deputy Town Manager/Director of Finance
	Chris Heep, Town Counsel
	Lee Newman, Director of Planning & Community Development
SUBJECT:	MBTA Communities Act and Funding at Risk
DATE:	November 6, 2024

The Office of the Town Manager has been asked about what funding is at risk if the Town of Needham is not compliant with the MBTA Communities Act. Attachment A outlines known sources of funding that are at risk.

The funding of most concern for the Town of Needham today are the following funding sources because (1) the Town is actively seeking these funds to advance priority projects, (2) these are high-value funding opportunities, (3) application deadlines are in the near term, and (4) we anticipate Needham's applications will be competitive.

1. **Boston Regional Metropolitan Planning Organization's (MPO) Transportation Improvement Program (TIP) – Redesign of Highland Avenue**
    - The Department of Public Works is actively preparing a TIP application for the redesign and construction of Highland Avenue from Webster Street to Great Plain Avenue. This is a priority project for the Town, with the goal to slow car speeds, better accommodate bicycles and pedestrians, and improve traffic flow.
    - The project cost is estimated at $20 million. Without federal and state funds Major state, regional, and local transportation improvement projects are funded through the TIP. The MPO is responsible for evaluating applications to receive federal and state funding through inclusion on the TIP.
    - The application deadline is December 31, 2024. The MPO considers applications in January, provides feedback in February, and scores projects in March 2025.
    - The Town has begun the design process in order to submit a competitive proposal that we anticipate will score well based on MPO's criteria.

2. **Federal Community Project Funding via Congressman Auchincloss' Office – Climate and Infrastructure Projects**
    - In FY23, Congressman Auchincloss secured $2 million for the design of the Centre Street/Central Avenue Bridge. This project is being led by Dover, but Dover and Needham share financial responsibility for its replacement.
    - In FY25, Congressman Auchincloss supported the Town of Needham's request of $3 million for stormwater management and secured $1.1 million in the House budget.
    - Application deadline is anticipated for March 2025.

- This is a flexible source of federal funding that can be used to advance priority water, sewer, roadway, stormwater, and other infrastructure projects in the Town of Needham that would otherwise have to be funded by local tax revenue.

Of note regarding Attachment A, some at-risk funds are identified in M.G.L. Chapter 40A Section 3a, others in the Executive Office of Housing and Livable Communities' guidelines for the implementation of the MBTA Communities Act and others are at the discretion of the awarding authority. Non-compliant municipalities are either not eligible to apply at all, or compliance status will be taken into consideration when discretionary funding decisions are made, making it highly unlikely that any non-compliant applications will be funded.

This is not an exhaustive list. Various State agencies and other awarding authorities continue to update discretionary grant programs to factor in compliance status. The Town is often not aware if compliance status will be taken into consideration until the requirements for a new round of funding is released.

Attachment A

MBTA Communities Act
Funds at Risk for Municipalities not in Compliance

Category	Funding Source	Funder	Anticipated Application Due Date (based on prior year)	Types of Projects (past or anticipated Needham projects are highlighted in blue)	Typical Grant Amounts
1 - MGL Chp 40A Sec 3A	Housing Choice Grant Program	Executive Office of Housing and Livable Communities (EOHLC)	June 2025	These funds support planning and zoning initiatives and public infrastructure construction projects in municipalities designated as Housing Choice Communities. Needham received a 5-year designation as a Housing Choice Community for 2022-2027.	up to $500,000
1 - MGL Chp 40A Sec 3A	HousingWorks Infrastructure Program	Executive Office of Housing and Livable Communities (EOHLC)	June 2025	Fund municipal infrastructure projects (roads, sidewalks, water, sewer, stormwater) to support and unlock housing opportunities. This grant program awards funds based on the project's nexus with housing, transportation, infrastructure, and community development needs.	$300,000 - $5 million
1 - MGL Chp 40A Sec 3A	Local Capital Projects Fund	Executive Office of Housing and Livable Communities (EOHLC)	n/a	Funds a portion of the subsidies provided to housing authorities and nonprofit organizations needed due to reduced rentals in housing for the elderly, handicapped, veterans, families and relocated persons.	a formula determines funding amounts
1 - MGL Chp 40A Sec 3A	MassWorks Infrastructure Program	Executive Office of Economic Development (EOED)	June 2025	In FY16, Needham received a $1.7M grant for infrastructure improvements to 1st Avenue. This program is one of the State's most flexible source of capital funds for municipal infrastructure projects (roads, water, sewer, stormwater, etc.). Grants support municipal projects that spur housing production, new jobs, or private development.	$500,000 - $5 million
2 - EOHLC MBTA Communities Act Guidelines	Brownfields Redevelopment Fund	MassDevelopment	June 2025	Environmental assessment and remediation of brownfield sites (contaminated land)	Up to $100,000 for site assessment; up to $250,000 for remediation
2 - EOHLC MBTA Communities Act Guidelines	Collaborative Workspace Program	MassDevelopment	June 2025	Matching grants for the planning, development, and build-out of collaborative workspaces for entrepreneurs, artists, designers, scientists, inventors, and small business owners.	up to $100,000
2 - EOHLC MBTA Communities Act Guidelines	Commonwealth Places Programs	MassDevelopment		To help communities implement placemaking projects that improve public spaces, create foot traffic, and stimulate economic activity.	up to $25,000
2 - EOHLC MBTA Communities Act Guidelines	Community Planning Grants	Executive Office of Housing and Livable Communities (EOHLC)	June 2025	In 2023, Needham received $70,000 to support direct community engagement efforts in the Housing Needham (HONE) Working Group visioning process and the creation of zoning for multi-family housing.	up to $150,000
2 - EOHLC MBTA Communities Act Guidelines	Local Acquisitions for Natural Diversity (LAND) Grants	Executive Office of Energy and Environmental Affairs (EOEEA)	July 2025	Funding to purchase land for conservation and passive recreation or to purchase a Conservation Restriction.	up to $500,000
2 - EOHLC MBTA Communities Act Guidelines	Massachusetts Downtown Initiative	Executive Office of Economic Development (EOED)	June 2025	In 2022, Needham received $25,000 in technical assistance/consulting services to develop a marketing strategy aimed at promoting small businesses in Needham Center. Grants can be used to support Business Improvement Districts, placemaking, wayfinding, small business support, and more.	up to $25,000
2 - EOHLC MBTA Communities Act Guidelines	Municipal Vulnerability Preparedness (MVP) Planning and Project Grants	Executive Office of Energy and Environmental Affairs (EOEEA)	December 2025	In FY19, Needham received $33,000 to complete a vulnerability assessment to prepare for the impacts of climate change and develop action-oriented resiliency plans. With this completed plan, Needham is eligible to apply for future MVP Action project grants.	up to $100,000
2 - EOHLC MBTA Communities Act Guidelines	Planning Assistance Grant	Executive Office of Energy and Environmental Affairs (EOEEA)	July 2025	This year, Needham applied for $45,000 to assist in the Planning Board's review of current parking requirements to reduce impervious cover and implement Low Impact Development (LID) practices. Award decision is pending.	up to $50,000

MBTA Communities Act
Funds at Risk for Municipalities not in Compliance

Category	Funding Source	Funder	Anticipated Application Due Date (based on prior year)	Types of Projects (past or anticipated Needham projects are highlighted in blue)	Typical Grant Amounts
2 - EOHLC MBTA Communities Act Guidelines	Real Estate Services Technical Assistance	MassDevelopment	June 2025	Technical assistance for municipalities to explore the redevelopment of a public surplus property or to address streetscape and infrastructure needs in a specific district to plan for growth.	
2 - EOHLC MBTA Communities Act Guidelines	Rural and Small Town Development Fund	Executive Office of Economic Development (EOED)	June 2025	Needham is not eligible to apply due to Town population.	n/a
2 - EOHLC MBTA Communities Act Guidelines	Site Readiness Program	MassDevelopment	June 2025	Funds municipal due diligence work, master planning, pre-permitting and permitting, engineering studies, capital improvements, demolition and/or property acquisition, that enhances a site's readiness for commercial, industrial, or mixed-use development.	$50,000 - $500,000
2 - EOHLC MBTA Communities Act Guidelines	Underutilized Properties Program	MassDevelopment	June 2025	Funds projects to improve or redevelop blighted, abandoned, vacant, or underutilized properties.	$50,000 to $1 million
2 - EOHLC MBTA Communities Act Guidelines	Urban Agenda Grant Program	Executive Office of Economic Development (EOED)	June 2025	General operating support for innovative and collaborative community economic development projects.	up to $100,000
3 - Funder Discretion	Decarbonization Technical Assistance	Executive Office of Energy and Environmental Affairs (EOEEA)	April 2025	In 2024, Needham was awarded technical assistance equivalent to $30,000 to create a municipal building decarbonization roadmap in support of Climate Leader Communities designation and future funding opportunities.	
3 - Funder Discretion	Energy Efficiency and Conservation Block Grant Program	Executive Office of Energy and Environmental Affairs (EOEEA)	August 2025	This year, Needham applied for $75,000 to fully insulate the Mitchell Elementary School attic which currently has no insulation. Award decision is pending.	up to $300,000
3 - Funder Discretion	Federal Community Project Funding	Congress via Congressman Auchincloss	March 2025	In FY24, Dover & Needham received $2 million to fund design for replacement of the Centre St/Central Ave Bridge. This year, Needham requested $3 million for stormwater best management practices. $1.1 million was approved by the U.S. House and remains pending in the federal budget process.	In FY25, Congressman Auchincloss submitted 15 projects requests ranging from $600,000 to $14 million.
3 - Funder Discretion	Green Communities Competitive Grant	Executive Office of Energy and Environmental Affairs (EOEEA)	May 2025	This year, Needham was awarded $162,848 for conversion of lighting at Eliot Elementary School to LEDs and the purchase and installation of heat pump hot water heaters at Town Hall and 470 Dedham Avenue (DPW). The Town previously received $148,143 to fund energy conservation measures, lighting, in municipal facilities including Pollard Middle, Mitchell, and Newman Schools.	up to $500,000
3 - Funder Discretion	MBTA Catalyst Fund	Executive Office of Housing and Livable Communities (EOHLC)	rolling application	Available to municipalities that have received an MBTA Communities Act district compliance determination letter from EOHLC. The Catalyst Fund will support activities related to housing creation, infrastructure projects associated with housing, and acquisition of property to promote housing.	$250,000 – $1 million
3 - Funder Discretion	Transportation Improvement Program (TIP)	Boston Region Metropolitan Planning Organization (MPO)	December 2024	Needham is actively preparing a TIP application due Decemeber 31, 2024 for the redesign and construction of Highland Avenue from Webster Street to Great Plain Avenue. The project cost is estimated at $20 million. Major state, regional, and local transportation improvement projects are funded through the TIP. The MPO is responsible for evaluating applications to receive federal and state funding through inclusion on the TIP.	Project scopes vary widely; regionally significant projects can receive $50 million or more.

PLANNING & COMMUNITY DEVELOPMENT
PLANNING DIVISION

DEFINITIVE SUBDIVISION DECISION
40 Highland Avenue and 14-16 Riverside Street
40 Highland Ave, LLC
November 19, 2024

DECISION of the Planning Board of the Town of Needham, Massachusetts, (hereinafter together with any entity succeeding to the powers of said Planning Board referred to as the Board) on the petition of 40 Highland Ave, LLC, 435E Dedham Street Newton, MA 02459 (to be referred to hereinafter as the Petitioner) for property located at and known as 40 Highland Avenue and 14-16 Riverside Street, Needham, MA. Said property is shown as Parcels 58 and 45 on Assessor's Map No. 73, and bounded and described as follows:

Two certain parcels of land in Needham, Norfolk County, as follows:

Parcel I

That certain parcel of land known and numbered 40 Highland Avenue, Needham, Norfolk County, MA, being more particularly described as follows:

Beginning at a point on the westerly sideline of Highland Avenue, Massachusetts highway layout number 8542, at the intersection of the southerly sideline of the Metropolitan District Commission; Thence running, south 74°21'18" east, by land now or formerly of the Metropolitan District Commission, a distance of 453.41 to a concrete bound with a drill hole; Thence turning and running, south 22°40'29" west, by land now or formerly of Joseph P. & Eileen J. Manning, a distance of 147.31 feet; Thence turning and running, north 67°55'38" west, by four parcels, a distance of 384.74 feet; Thence turning and running, south 25°45'55" west, by land now or formerly of Arthur & Anna Deych, a distance of 9.48 feet; Thence turning and running. north 64°40'02" west, by land now or formerly of Nina Prohodski and Helen Harcovitz, a distance of 85.29 feet to the aforementioned sideline of Highland Avenue; and Thence turning and running, north 34°04'13" east, by said sideline, a distance of 103.41 to the point of beginning. Containing 56,409 square feet, more or less.

Parcel II

That certain parcel of land known and numbered 14 Riverside Street, Needham, Norfolk County, MA, being more particularly bounded and described as follows:

Beginning at a point on the northerly sideline of Riverside Streetbeing the southwesterly corner of said parcel; Thence running, north 25°45'55" east, by land now or formerly of Arthur & Anna Deych, a distance of 60.71 to an iron rod with a cap; Thence turning and running, south 67°55'38" east, by land now or formerly of 40 highland Avenue LLC, a distance of 150.31 feet; Thence turning and running, south 25°45'55" west, by land now or formerly of Boris Karpachev

& Rufina Veysberg, a distance of 70.39 feet to the aforementioned sideline of Riverside Street; and Thence turning and running, north 64°14'05" west, by said sideline, a distance of 150.00 feet to the point of beginning; Containing 9,832 square feet, more or less.

This decision is in response to an application for approval by the Petitioner of a Definitive Subdivision Plan submitted to the Board on August 6, 2024, under Massachusetts General Laws, Chapter 41, Sections 81-K through 81-GG, inclusive.

If approved, the Plan would subdivide the Premises into three building lots, two of which will be used for residential purposes and the third of which will continue to be used for commercial purposes; the two new residential lots would have frontage and access on the new road.

After causing notice of the time and place of its 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, Natasha Espada, Chairperson of the Board, called the hearing to order on Tuesday, August 27, 2024, at 7:30 p.m. in the Charles River Room, first floor, Public Services Administration Building, 500 Dedham Avenue, Needham, Massachusetts, as well as by Zoom Web ID Number 880 4672 5264. The hearing was continued to Tuesday, September 17, 2024 at 7:30 p.m. in the Charles River Room of the Public Services Administration Building, 500 Dedham Avenue, Needham, MA as well as by Zoom Web ID Number 880 4672 5264. The hearing was further continued to Tuesday October 15, 2024 at 8:00 p.m. in the Charles River Room of the Public Services Administration Building, 500 Dedham Avenue, Needham, MA as well as by Zoom Web ID Number 880 4672 5264. Board members Natasha Espada, Artie Crocker, Adam Block, Paul S. Alpert, and Justin McCullen were present throughout the proceedings. The record of the proceedings and submissions upon which this approval is based may be referred to in the office of the Town Clerk or the Planning Board Office.

Submitted for their deliberations prior to the close of the public hearing were the following exhibits.

Exhibit 1 - Application for Definitive Subdivision Approval with Exhibit A (List of Waivers) and Exhibit B (Property Description). Filed with the Town Clerk on August 6, 2024.

Exhibit 2 - Letter from Steven Wolberg, Manager, 40 Highland Ave, LLC, to Lee Newman, Planning Director, dated June 20, 2024.

Exhibit 3 - Letter directed to Lee Newman, Director of Planning and Community Development, from George Giunta Jr., dated July 16, 2024.

Exhibit 4 - Plan set entitled Definitive Subdivision Plan for 40 Highland Ave, LLC, prepared by Land Design Collaborative, 45 Lyman Street, Westborough, MA 01581, Field Resources, 281 Chestnut Street, Needham, MA, 02492 consisting of 11 sheets: Sheet 1, Title Sheet, dated April 26, 2024; Sheet 2, entitled "General Notes and Legend," dated April 19, 2024; Sheet 3, entitled "Existing Conditions Plan," dated April 26, 2024; Sheet 4, entitled "Lotting Plan, By Right," dated April 26, 2024; Sheet 5, entitled "Lotting Plan, Waiver," dated April 26, 2024; Sheet 6, entitled "Grading and Drainage Plan," dated April 19, 2024; Sheet 7, entitled "Plan & Profile, STA0+00 To End," dated April 26, 2024; Sheet 8, entitled "Details," dated April 26, 2024; Sheet 9, entitled "Details," dated April 26, 2024;

Sheet 10, entitled "Details," dated April 26, 2024; and Sheet 11, entitled "Turning Movement Exhibit, Fire Apparatus," dated April 26, 2024.

Exhibit 5 - Stormwater Management Report, prepared by Land Design Collaborative, dated April 2024.

Exhibit 6 - Email from Elizabeth Kaponya, 27 Highland Terrace, dated August 27, 2024.

Exhibit 7 - Email from Patricia Baker, dated August 27, 2024.

Exhibit 8 - Email from Robert Deutsch, 14 Highview Street, dated August 27, 2024.

Exhibit 9 - Email from Ryan K. McKee, 18 Highview Street, dated August 27, 2024.

Exhibit 10 - Letter from Land Design Collaborative, James T. Almonte, Principal and Michael J. Scott, Principal, dated August 26, 2024.

Exhibit 11 - Email from Naomi Ribner, 40 Riverside Street, dated August 27, 2024.

Exhibit 12 - Email from Janice Epstein, 75 Highland Terrace, dated September 3, 2024.

Exhibit 13 - Letter directed to Lee Newman, Director of Planning and Community Development, from George Giunta Jr., dated September 11, 2024, with Exhibit A (Email Correspondence with Alex Prohodski), Exhibit B (Email Correspondence with Arthur Deych), Exhibit C (Email Correspondence from Michael Scott, Project Engineer), and Exhibit D (Fire Department Submittal).

Exhibit 14 - Email from Ryan K. McKee, 18 Highview Street, dated September 16, 2024.

Exhibit 15 - Email from Ronnie Gavel, Fire Inspector, directed to James T. Almonte, Principal, Land Design Collaborative, dated August 27, 2024.

Exhibit 16 - Email from Ronnie Gavel, Fire Inspector, directed to James T. Almonte, Principal, Land Design Collaborative, dated September 17, 2024.

Exhibit 17 - Letter directed to Lee Newman, Director of Planning and Community Development, from George Giunta Jr., dated October 7, 2024.

Exhibit 18 - Revised Plan Sheets:

a) Sheet 6, entitled "Grading and Drainage Plan," dated April 19, 2024, revised September 24, 2024;
b) Sheet 8, entitled "Details," dated April 26, 2024, revised September 24, 2024;
c) Sheet 9, entitled "Details," dated April 26, 2024, revised September 24, 2024.

Exhibit 19 - Interdepartmental Communication (IDC) to the Board from Debbie Anderson, Director, Conservation Department, dated August 21, 2024; IDC to the Board from Thomas Ryder, Town Engineer, dated August 21, 2024 and October 15, 2024; IDC to the Board from Donald E. Anastasi, Deputy Chief of Operations, Needham Fire Department, dated August 20, 2024; IDC to the Board from Chief

John Schlittler, Needham Police Department, dated August 2, 2024; IDC to the Board from Joe Prondak, Building Commissioner, dated August 2, 2024; and IDC to the Board from Tara Gurge, Assistant Director of Public Health, dated August 20, 2024.

Exhibits 1, 2, 3, 4, 5 and 18 are referred to hereinafter as the Plan.

The Board hereby APPROVES the Subdivision, as shown on the Plan, located in Needham, Norfolk County, Massachusetts, to be recorded herewith, for the reasons and subject to the plan modifications, conditions and waivers herein set forth. The approval herein granted is based on Plan set entitled Definitive Subdivision Plan for 40 Highland Ave, LLC, prepared by Land Design Collaborative, 45 Lyman Street, Westborough, MA 01581, Field Resources, 281 Chestnut Street, Needham, MA, 02492 consisting of 11 sheets: Sheet 1, Title Sheet, dated April 26, 2024; Sheet 2, entitled "General Notes and Legend," dated April 19, 2024; Sheet 3, entitled "Existing Conditions Plan," dated April 26, 2024; Sheet 4, entitled "Lotting Plan, By Right," dated April 26, 2024; Sheet 5, entitled "Lotting Plan, Waiver," dated April 26, 2024; Sheet 6, entitled "Grading and Drainage Plan," dated April 19, 2024, revised September 24, 2024; Sheet 7, entitled "Plan & Profile, STA0+00 To End," dated April 26, 2024; Sheet 8, entitled "Details," dated April 26, 2024, revised September 24, 2024; Sheet 9, entitled "Details," dated April 26, 2024, revised September 24, 2024; Sheet 10, entitled "Details," dated April 26, 2024; and Sheet 11, entitled "Turning Movement Exhibit, Fire Apparatus," dated April 26, 2024.

1. The Board has waived compliance with the following requirements of the Town of Needham, Subdivision Rules and Procedural Rules of the Planning Board, having found that such action is in the public interest and is not inconsistent with the intent and purposes of the Subdivision Control Law.

a) The Board hereby waives the requirements of Section 3.3.1 of the Town of Needham, Subdivision Rules and Procedural Rules of the Planning Board, which would otherwise require that all streets be laid out to a width of 50 feet and approves instead a 40-foot wide right-of-way, as shown on the Plan, as modified by this decision. The above-named waiver is subject to the provisions of paragraphs 3 through 13 of this decision. The Board found a right-of-way width of 40 feet to be sufficient to accommodate the 2 new residential lots. In the granting of this waiver, the Board considered the Plan as referred to in Exhibits 1, 2, 3, 4, 5 and 18 hereof.

b) The Board hereby waives the requirements of Section 3.3.5 of the Town of Needham, Subdivision Rules and Procedural Rules of the Planning Board, which would otherwise require that the pavement within the cul-de-sac have a minimum radius of 60 feet and approves instead a hammerhead back-up strip, as shown on the Plan, as modified by this decision. The above-named waiver is subject to the provisions of paragraphs 3 through 13 of this decision. In the granting of this waiver, the Board considered the Plan as referred to in Exhibits 1, 2, 3, 4, 5 and 17 hereof and the specific goal of minimizing regrading and impervious surface on the site which would otherwise have been required if a 60-foot radius paved circle was to be required.

c) The Board hereby waives the requirements of Section 3.3.16 of the Town of Needham, Subdivision Rules and Procedural Rules of the Planning Board, which would otherwise require the construction of a sidewalk in accordance with the "Standard Specifications" of the Town of Needham along both sides of the proposed roadway and approves instead no walkways, as shown on the Plan, as modified by this decision. The above-named waiver is

subject to the provisions of paragraphs 3 through 13 of this decision. In the granting of this waiver, the Board considered the number of homes served by this subdivision, the projected traffic volume for the new Private Way, and the dead-end nature of the proposed street.

2. Petitioner shall cause the Plan to be revised to show the following additional or revised information which modifications shall be subject to review and approval of the Board prior to endorsement of the Plan:

a) The plan shall be revised to name Riverside Street as Riverside Street.
b) The Plan shall be revised to show a 15-foot landscape buffer easement along the southerly property line of Lot 103.

3. The waiver of street construction requirements, as fully set forth in paragraphs 1.a, 1.b, and 1.c is expressly conditioned upon and subject to the restriction that neither the owner nor any successor owner or owners of Lot 102 or 103 as shown on the Plan (hereinafter referred to individually as a Lot or collectively as the Lots) shall use the Lots for any purpose other than single-family residential use, ~~-~~two-family residential use or ~~or~~ Lot owner home occupations as allowed under the Zoning By-Law, as shown on the Plan, as approved by the Board and recorded herewith, and there shall be no further division of the Lots as shown thereon without the prior written approval of the Planning Board. Lot 101 is to be accessed solely from Highland Avenue, not the private way, and is excluded from the obligations under the Homeowners Trust Agreement.

4. Each and every owner or owners of any Lot shall be jointly and severally responsible and liable, and shall fulfill all lot owners' obligations under a Homeowners Trust Agreement, for the costs of the maintenance, repair and reconstruction of the Private Way shown on the Plan and designated thereon and all services, (whether the services are located within the Private Way or in areas shown partially on the Private Way and partially on a Lot), the installation of which are required in connection with this approval, or which may be installed at any time, including, without limitation, maintenance, repair and reconstruction of roadways, water, sewer and drainage facilities and other utilities and related equipment, curbs, monuments, walkways, landscaping and street signs, as and whenever necessary, and including all actions of any kind or nature necessary or appropriate in order to maintain the Private Way in a good, safe and passable condition, including snow plowing, providing access from each Lot to a public way, as shown on the Plan, and providing adequate services to each Lot, all in accordance with these conditions.

5. Each and every owner or owners of ~~any~~ Lots 102 and 103 shall be jointly and severally responsible and liable and shall fulfill all Lot owners' obligations under the Homeowners Trust Agreement, for all maintenance, repairs and reconstruction required for or on the Private Way in compliance with and in conformity with requirements of the Town of Needham and other requirements imposed by law or governmental authority.

6. The Trustees under the Homeowners Trust Agreement and each owner of a Lot shall not use or permit use of the Private Way for any purpose other than ingress and egress from the Lots by the residents of the Lots and their guests and invitees, such use to be limited to pedestrian and private-passenger vehicular traffic, and such other vehicular traffic as is necessary from time to time in cases of emergency, delivery of customary and usual household services and equipment or in connection with the maintenance, repair or reconstruction of the Private Way, the Lot, and any structures thereon and services installed thereon, or hereunder.

7. Neither the Lot owners nor the Trustees under the Homeowners Trust Agreement shall perform, nor shall they permit changes to be made to any Lot, which would impact the functionality or design of the drainage improvements as shown on the Plan.

8. Any and all maintenance, repair or reconstruction work performed on or to the Private Way or in connection with services installed thereon or hereunder by or at the direction of any owner or owners of any Lot or the Trustees under the Homeowners Trust Agreement as provided herein shall be carried out so as to ensure that no fill material nor any products or excavation or erosion resulting from or arising in connection with such work shall be discharged into any storm drainage system, and soil and other material or debris shall be removed from the site only if such removal will not impact the functionality or design of the drainage improvements shown on the Plan, and only to the extent necessary in connection with such work.

9. No Lot owner nor the Trustees under the Homeowners Trust Agreement shall at any time request that the Private Way be laid out or accepted as a public way in the Town of Needham unless such owner or owners or Trustees at its or their sole expense, perform and complete such work as is necessary to cause the Private Way to comply with all standards and regulations of the Town of Needham without waiver, and obtain all permits and approvals required by law in connection therewith. If the Private Way is accepted by the Town of Needham as a public way at any time, then the provisions hereof applicable to ownership and maintenance of the Private Way shall thereupon terminate.

10. No Lot owner nor the Trustees under the Homeowners Trust Agreement, shall at any time request or petition that any drainage system, water pipes, sewer pipes or related equipment or any other improvement within the subdivision for which design or improvement requirements have been waived by the Board as provided herein, be accepted or maintained by the Town of Needham.

11. The Town of Needham and its designees shall have the right to enter upon the Private Way for all purposes for which public ways are used in the Town of Needham.

12. In any sale or transfer by the owner or any successor owner of any of the Lots, the deed or other instrument shall refer to and incorporate conditions 3 through 11 inclusive and a) any conveyance of Lot 102 and Lot 103 shall include transfer of a fee interest or the perpetual right and easement to use the Private Way in common with others lawfully entitled thereto for all purposes for which public ways in the Town of Needham may now or hereafter be used consistent with the provisions hereof, and the b) subsurface areas, equipment and facilities used and maintained in connection with the provision of water, sewer, drainage and other utility services provided to the conveyed premises. Any deed or other instrument purporting to transfer or convey any interest in any Lot or Lots which does not expressly refer to and incorporate these conditions shall nevertheless be deemed to contain the same and in all events shall be subject thereto.

13. The Petitioner shall deliver to the Board a Restrictive Covenant incorporating conditions 3 through 11 inclusive of this decision in a form suitable for recording in the Registry of Deeds that shall run with the land and shall be enforceable by the Town. Such restriction shall only affect and encumber Lots 102 and 103 and shall be referenced on the Plan and shall be recorded therewith. Said covenant shall be enforceable in perpetuity or for the longest period permitted by law and in any event for 100 years.

14. Lot~~s~~ 102 may be accessed from either Riverside Street or the new Private Way and Lot 103 ~~inclusive as shown on the Plan~~ shall be accessed solely from the new Private Way with no vehicular access for such~~said~~ lot ~~s~~ provided directly to Riverside Street. Vehicular access to the new Private Way shall be limited to said Lots 102 and 103 as shown on the Plan. Lot 101 is to be accessed solely from Highland Avenue.

~~15.~~ Lot 101 shall not be accessed from the new roadway.

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15~~6~~. There shall be no alteration or change to a Lot so as to affect the drainage system for any Lot, or the drainage systems running across a Lot, as shown on the Plan, as modified by this decision, without the prior written approval of the Planning Board or Town Engineer as noted below. Any Lot owner who proposes to make a change from the approved Plan shall first file a copy of a plan depicting the proposed changes with the Needham Town Engineer, with a request for a determination as to whether the changes affect the drainage system. If the Town Engineer determines that the changes affect the drainage system, or if the Town Engineer fails to respond to the request for a determination within 45 days, the Lot owner may file the plan with the Planning Board for its review. In such event, the Lot owner shall file with the Planning Board such information as the Planning Board determines necessary for its review. The Planning Board shall hold a public hearing within 60 days of receiving a complete filing. After said public hearing, the Board may, in its sole discretion, find that the proposed changes do not appear to negatively impact down gradient property owners or interfere with the functioning of the drainage system(s) of the Lot or subdivision. In such event the Lot owner, only upon receipt of a written decision from the Planning Board, may implement the changes as shown on the new plan.

16~~7~~. Off-street drainage surety in the amount of $10,500.00 shall be posted ($3,500.00 per lot) prior to the release of Lots 101, 102 and 103 inclusive as shown on the Plan for purposes of building or conveyance. As recommended in the memo of the Board of Health dated August 20, 2024, all lots shall be graded to the limits of construction so as to have no standing water and/or otherwise create a public health nuisance. Grading shall not improperly shed or illegally increase drainage onto adjacent properties. All subsequent developers or builders shall be notified of the off-street drainage bond and the specific off-street drainage requirements. If required by the Board of Health, an as-built certified grading plan(s) of all or any of the lots shall be submitted prior to release of the drainage surety.

17~~8~~. Each record owner, whether one or more persons or entities of title to Lots 102~~1~~ and 103~~2~~, as shown on the Plan, shall maintain and keep operational their respective roof drainage system in accordance with the Plan, as approved by this decision and as further described in the Stormwater Management Report, prepared by Land Design Collaborative, dated April 2024 (Exhibit 5).

18~~9~~. Prior to plan endorsement and in keeping with Phase II NPDES, Town of Needham as filed July 30, 2003, the Petitioner shall select a BMP topic under "Public Education and Outreach" and "Public Participation/Involvement" and shall implement said selected topic prior to the release of the subdivision lots.

19~~20~~. The following safeguards shall be implemented during construction:

a. The hours of construction and construction related activities shall be limited to 7:30 a.m. to 6:00 p.m. Monday through Saturday.

b. 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 Riverside Street or Highland Avenue. The designee shall supply a phone number where the designee can be reached 24 hours per day.

c. 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 or materials to or from the site and keeping South Street clean of dirt and debris and watering appropriate portions of the construction site from time to time as may be necessary.

201. Prior to site alteration the Petitioner shall mark in the field those trees which the landscape plan indicates will be retained. Such trees identified to be preserved shall be distinguished with appropriate markings, which may include surrounding fences or stakes. Any such trees removed which were identified for retention shall be replaced with trees of similar quality and caliper or as otherwise approved by the Board.

212. A Department of Environmental Protection sewer extension and connection permit may be required to service the subdivision and Lots 102 and 103abutting lots. If required, approval of this subdivision is subject to the granting by the Select Board and the Department of Environmental Protection of a Sewer Extension and Connection Permit.

223. Any and all special permits required by the Massachusetts Water Resources Authority shall be obtained at the expense of the Petitioner.

234. A special sewer connection permit program fee shall be provided for Lots 102 and 103, as and to the extent applicable. all lots within the subdivision.

245. Grade adjustment rings are not permitted to adjust gate boxes and/or other castings. The Petitioner shall use appropriately sized castings.

256. All catch basins shall remain functional at all times. Rims shall be set at binder elevation and shall be adjusted to finish course elevation prior to placement of the top course of pavement.

267. If the binder course of pavement is exposed to one winter season, it shall be chipsealed prior to September l of the following winter season. If the roadway work is not completed prior to the third winter season, road reconstruction may be required by the Director of Streets.

278. No openings in the pavement shall be made after the chipseal has been laid between September l and April l.

289. The construction, operation and maintenance of the subdivision shall be conducted in accordance with the EPA's Memorandum of Understanding signed by the Board of Selectmen.

2930. "As-built" construction plans of the sewer, water and drainage utilities shall be submitted to the Department of Public Works and the Board for review and approval prior to release of the respective performance bond amounts.

301. All future sewer tie-ins to properties located outside of this subdivision shall be accomplished in a manner consistent with the “Town of Needham Master Plan of Connection to

the MWRA Sewer" dated January 8, 1988, (as revised) and prepared by the Needham Public Works, Sewer Division.

312. Prior to the commencement of any street construction within the subdivision, the location of future street lighting, location of fire alarm circuits and outlets, and the location of underground power to serve these, as applicable, shall be shown on an amended version of the definitive utility plan to be filed with the Board and Public Works Department.

323. The provisions of M.G.L., Chapter 131, Section 40 and 40A and the Needham Wetlands Protection By-Law shall be satisfied.

334. All construction staging and parking shall be on-site. No construction parking shall be permitted on Riverside Street or Highland Avenue or on any other public street.

345. All areas where utilities are proposed shall be compacted to the satisfaction of the Public Works Department.

356. In the absence of any details or waivers set forth herein, the current Subdivision Regulations and Procedural Rules of the Planning Board shall govern and are hereby made a part of this decision. All construction details not specifically shown on the approved Plan shall conform to Department of Public Works specifications.

367. The developer is directed to submit the Subdivision Inspection Form during all phases of construction as required, in accordance with Appendix E of the Subdivision Regulations and Procedural Rules of the Planning Board.

378. Notwithstanding the provisions of the Town of Needham, Subdivision Rules and Procedural Rules of the Planning Board, the Petitioner shall have two years from the date of endorsement of the Plan to complete the installation and construction of the new Private Way, and the services provided therein, in accordance with the applicable Subdivision Regulations and Procedural Rules of the Planning Board. Failure to so complete shall automatically rescind approval of the Subdivision Plan.

389. The Petitioner shall enter a written agreement to guarantee completion, once commenced, of the required improvements for all lots in the Subdivision, as shown on the Plan, with such construction and installation to be additionally secured by one of the methods delineated under the provisions of Section 3.5.1. Such agreement shall be subject to review and approval of the Board prior to endorsement of the Plan.

3940. The Petitioner shall deliver to the Board for its approval a duly executed easement deed to the Town of Needham granting to the Town the right to pass on foot or by vehicle over the Private Way a Subdivision Covenant, a Landscape Buffer Planting Strip Covenant and Restriction, a Restrictive Covenant and Homeowners Trust Agreement, all as may be required and as shown on the Plan ("the Documents"). The Documents shall be subject to review and approval of the Board prior to endorsement of the Plan. The Documents shall be referenced on the Plan and all documents shall be recorded with the Plan.

401. Prior to the release of either Lot 102 or Lot 103~~any lots~~ for building or sale, copies of the recorded instruments described in paragraphs 13 and 3940 of this decision and copies of the recorded plan shall be provided to the Director of Planning and Community Development.

412. The Petitioner shall present the Plan to the Board for proper endorsement within ninety (90) days of the date this decision is executed unless such time period is extended, in writing, by the Board. The Board reserves the right to rescind its approval if said Plan is not presented to the Board for endorsement within the time period herein specified. Further, the Petitioner or his authorized representative shall submit the Plan to the Director of Planning and Community Development fourteen (14) days in advance of its presentation to the Board to allow adequate time to review the revised Plan for compliance with the Conditions of this decision.

The foregoing has been stated for the purpose of emphasizing their importance and are not intended to be all inclusive or to negate any provision of the Town of Needham, Subdivision Rules and Procedural Rules of the Planning Board.

Under the provisions of the Town of Needham, Subdivision Regulations and Procedural Rules of the Planning Board and Massachusetts General Laws, Chapter 41, Sections 81-K through 81-GG, inclusive, the Board shall have the power to modify or amend the terms and conditions of this approval after due notice on the application of the owner, lessee or mortgagee of the premises or upon its own motion. All the provisions of the Subdivision Control Law applicable to approval shall, where appropriate, be applicable to such modification or amendment. Such power is hereby reserved. Appeals, if any, shall be made pursuant to Section 81-BB of the Massachusetts General Laws, Chapter 41, and shall be filed within twenty (20) days after the date of filing this decision with the Town Clerk.

The provisions of this Approval and Conditions shall be binding upon every owner or owners of each of the lots, as shown on the Plan, and the executors, administrators, heirs, successors and assigns of such owners, and the obligations and restrictions herein set forth shall run with said land in full force and effect for the benefit of and enforceable by the Town of Needham. Reference to this Approval shall be entered upon the Plan and this Approval shall be recorded in the Norfolk Registry of Deeds with the Plan.

Witness our hands this 19th day of November, 2024

NEEDHAM PLANNING BOARD

_____
Natasha Espada, Chair

_____
Artie Crocker

_____
Adam Block

_____
Paul S. Alpert

_____
Justin McCullen

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss _____2024

On this _____day of _____, 2024, before me, the undersigned notary public, personally appeared _____, one of the members of the Planning Board of the Town of Needham, Massachusetts, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the proceeding or attached document, and acknowledged the foregoing to be the free act and deed of said Board before me.

_____
Notary Public name:
My Commission Expires: _____

TO WHOM IT MAY CONCERN: This is to certify that the 20-day appeal period on the approval of the Project proposed by 40 Highland Ave, LLC, 435E Dedham Street Newton, MA 02459, for Property located at 40 Highland Avenue and 14-16 Riverside Street, Needham, Norfolk County, Massachusetts, has passed,

____and there have been no appeals filed in the Office of the Town Clerk or
____there has been an appeal filed.

_____ _____
Date Louise Miller, Town Clerk

Copy sent to:

Petitioner-Certified Mail # _____	Board of Selectmen	Board of Health
Town Clerk	Engineering	Director, PWD
Building Commissioner	Fire Department	Design Review Board
Conservation Commission	Police Department	
Parties in Interest	George Giunta Jr., Attorney	

PLANNING & COMMUNITY DEVELOPMENT
PLANNING DIVISION

DEFINITIVE SUBDIVISION DECISION
40 Highland Avenue and 14-16 Riverside Street
40 Highland Ave, LLC
November 19, 2024

DECISION of the Planning Board of the Town of Needham, Massachusetts, (hereinafter together with any entity succeeding to the powers of said Planning Board referred to as the Board) on the petition of 40 Highland Ave, LLC, 435E Dedham Street Newton, MA 02459 (to be referred to hereinafter as the Petitioner) for property located at and known as 40 Highland Avenue and 14-16 Riverside Street, Needham, MA. Said property is shown as Parcels 58 and 45 on Assessor's Map No. 73, and bounded and described as follows:

Two certain parcels of land in Needham, Norfolk County, as follows:

Parcel I

That certain parcel of land known and numbered 40 Highland Avenue, Needham, Norfolk County, MA, being more particularly described as follows:

Beginning at a point on the westerly sideline of Highland Avenue, Massachusetts highway layout number 8542, at the intersection of the southerly sideline of the Metropolitan District Commission; Thence running, south 74°21'18" east, by land now or formerly of the Metropolitan District Commission, a distance of 453.41 to a concrete bound with a drill hole; Thence turning and running, south 22°40'29" west, by land now or formerly of Joseph P. & Eileen J. Manning, a distance of 147.31 feet; Thence turning and running, north 67°55'38" west, by four parcels, a distance of 384.74 feet; Thence turning and running, south 25°45'55" west, by land now or formerly of Arthur & Anna Deych, a distance of 9.48 feet; Thence turning and running. north 64°40'02" west, by land now or formerly of Nina Prohodski and Helen Harcovitz, a distance of 85.29 feet to the aforementioned sideline of Highland Avenue; and Thence turning and running, north 34°04'13" east, by said sideline, a distance of 103.41 to the point of beginning. Containing 56,409 square feet, more or less.

Parcel II

That certain parcel of land known and numbered 14 Riverside Street, Needham, Norfolk County, MA, being more particularly bounded and described as follows:

Beginning at a point on the northerly sideline of Riverside Streetbeing the southwesterly corner of said parcel; Thence running, north 25°45'55" east, by land now or formerly of Arthur & Anna Deych, a distance of 60.71 to an iron rod with a cap; Thence turning and running, south 67°55'38" east, by land now or formerly of 40 highland Avenue LLC, a distance of 150.31 feet; Thence turning and running, south 25°45'55" west, by land now or formerly of Boris Karpachev

& Rufina Veysberg, a distance of 70.39 feet to the aforementioned sideline of Riverside Street; and Thence turning and running, north 64°14'05" west, by said sideline, a distance of 150.00 feet to the point of beginning; Containing 9,832 square feet, more or less.

This decision is in response to an application for approval by the Petitioner of a Definitive Subdivision Plan submitted to the Board on August 6, 2024, under Massachusetts General Laws, Chapter 41, Sections 81-K through 81-GG, inclusive.

If approved, the Plan would subdivide the Premises into three building lots, two of which will be used for residential purposes and the third of which will continue to be used for commercial purposes; the two new residential lots would have frontage and access on the new road.

After causing notice of the time and place of its 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, Natasha Espada, Chairperson of the Board, called the hearing to order on Tuesday, August 27, 2024, at 7:30 p.m. in the Charles River Room, first floor, Public Services Administration Building, 500 Dedham Avenue, Needham, Massachusetts, as well as by Zoom Web ID Number 880 4672 5264. The hearing was continued to Tuesday, September 17, 2024 at 7:30 p.m. in the Charles River Room of the Public Services Administration Building, 500 Dedham Avenue, Needham, MA as well as by Zoom Web ID Number 880 4672 5264. The hearing was further continued to Tuesday October 15, 2024 at 8:00 p.m. in the Charles River Room of the Public Services Administration Building, 500 Dedham Avenue, Needham, MA as well as by Zoom Web ID Number 880 4672 5264. Board members Natasha Espada, Artie Crocker, Adam Block, Paul S. Alpert, and Justin McCullen were present throughout the proceedings. The record of the proceedings and submissions upon which this approval is based may be referred to in the office of the Town Clerk or the Planning Board Office.

Submitted for their deliberations prior to the close of the public hearing were the following exhibits.

Exhibit 1 - Application for Definitive Subdivision Approval with Exhibit A (List of Waivers) and Exhibit B (Property Description). Filed with the Town Clerk on August 6, 2024.

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Exhibit 9 - Email from Ryan K. McKee, 18 Highview Street, dated August 27, 2024.

Exhibit 10 - Letter from Land Design Collaborative, James T. Almonte, Principal and Michael J. Scott, Principal, dated August 26, 2024.

Exhibit 11 - Email from Naomi Ribner, 40 Riverside Street, dated August 27, 2024.

Exhibit 12 - Email from Janice Epstein, 75 Highland Terrace, dated September 3, 2024.

Exhibit 13 - Letter directed to Lee Newman, Director of Planning and Community Development, from George Giunta Jr., dated September 11, 2024, with Exhibit A (Email Correspondence with Alex Prohodski), Exhibit B (Email Correspondence with Arthur Deych), Exhibit C (Email Correspondence from Michael Scott, Project Engineer), and Exhibit D (Fire Department Submittal).

Exhibit 14 - Email from Ryan K. McKee, 18 Highview Street, dated September 16, 2024.

Exhibit 15 - Email from Ronnie Gavel, Fire Inspector, directed to James T. Almonte, Principal, Land Design Collaborative, dated August 27, 2024.

Exhibit 16 - Email from Ronnie Gavel, Fire Inspector, directed to James T. Almonte, Principal, Land Design Collaborative, dated September 17, 2024.

Exhibit 17 - Letter directed to Lee Newman, Director of Planning and Community Development, from George Giunta Jr., dated October 7, 2024.

Exhibit 18 - Revised Plan Sheets:

a) Sheet 6, entitled "Grading and Drainage Plan," dated April 19, 2024, revised September 24, 2024;
b) Sheet 8, entitled "Details," dated April 26, 2024, revised September 24, 2024;
c) Sheet 9, entitled "Details," dated April 26, 2024, revised September 24, 2024.

Exhibit 19 - Interdepartmental Communication (IDC) to the Board from Debbie Anderson, Director, Conservation Department, dated August 21, 2024; IDC to the Board from Thomas Ryder, Town Engineer, dated August 21, 2024 and October 15, 2024; IDC to the Board from Donald E. Anastasi, Deputy Chief of Operations, Needham Fire Department, dated August 20, 2024; IDC to the Board from Chief

John Schlittler, Needham Police Department, dated August 2, 2024; IDC to the Board from Joe Prondak, Building Commissioner, dated August 2, 2024; and IDC to the Board from Tara Gurge, Assistant Director of Public Health, dated August 20, 2024.

Exhibits 1, 2, 3, 4, 5 and 18 are referred to hereinafter as the Plan.

The Board hereby APPROVES the Subdivision, as shown on the Plan, located in Needham, Norfolk County, Massachusetts, to be recorded herewith, for the reasons and subject to the plan modifications, conditions and waivers herein set forth. The approval herein granted is based on Plan set entitled Definitive Subdivision Plan for 40 Highland Ave, LLC, prepared by Land Design Collaborative, 45 Lyman Street, Westborough, MA 01581, Field Resources, 281 Chestnut Street, Needham, MA, 02492 consisting of 11 sheets: Sheet 1, Title Sheet, dated April 26, 2024; Sheet 2, entitled "General Notes and Legend," dated April 19, 2024; Sheet 3, entitled "Existing Conditions Plan," dated April 26, 2024; Sheet 4, entitled "Lotting Plan, By Right," dated April 26, 2024; Sheet 5, entitled "Lotting Plan, Waiver," dated April 26, 2024; Sheet 6, entitled "Grading and Drainage Plan," dated April 19, 2024, revised September 24, 2024; Sheet 7, entitled "Plan & Profile, STA0+00 To End," dated April 26, 2024; Sheet 8, entitled "Details," dated April 26, 2024, revised September 24, 2024; Sheet 9, entitled "Details," dated April 26, 2024, revised September 24, 2024; Sheet 10, entitled "Details," dated April 26, 2024; and Sheet 11, entitled "Turning Movement Exhibit, Fire Apparatus," dated April 26, 2024.

1. The Board has waived compliance with the following requirements of the Town of Needham, Subdivision Rules and Procedural Rules of the Planning Board, having found that such action is in the public interest and is not inconsistent with the intent and purposes of the Subdivision Control Law.

a) The Board hereby waives the requirements of Section 3.3.1 of the Town of Needham, Subdivision Rules and Procedural Rules of the Planning Board, which would otherwise require that all streets be laid out to a width of 50 feet and approves instead a 40-foot wide right-of-way, as shown on the Plan, as modified by this decision. The above-named waiver is subject to the provisions of paragraphs 3 through 13 of this decision. The Board found a right-of-way width of 40 feet to be sufficient to accommodate the 2 new residential lots. In the granting of this waiver, the Board considered the Plan as referred to in Exhibits 1, 2, 3, 4, 5 and 18 hereof.

b) The Board hereby waives the requirements of Section 3.3.5 of the Town of Needham, Subdivision Rules and Procedural Rules of the Planning Board, which would otherwise require that the pavement within the cul-de-sac have a minimum radius of 60 feet and approves instead a hammerhead back-up strip, as shown on the Plan, as modified by this decision. The above-named waiver is subject to the provisions of paragraphs 3 through 13 of this decision. In the granting of this waiver, the Board considered the Plan as referred to in Exhibits 1, 2, 3, 4, 5 and 17 hereof and the specific goal of minimizing regrading and impervious surface on the site which would otherwise have been required if a 60-foot radius paved circle was to be required.

c) The Board hereby waives the requirements of Section 3.3.16 of the Town of Needham, Subdivision Rules and Procedural Rules of the Planning Board, which would otherwise require the construction of a sidewalk in accordance with the "Standard Specifications" of the Town of Needham along both sides of the proposed roadway and approves instead no walkways, as shown on the Plan, as modified by this decision. The above-named waiver is

subject to the provisions of paragraphs 3 through 13 of this decision. In the granting of this waiver, the Board considered the number of homes served by this subdivision, the projected traffic volume for the new Private Way, and the dead-end nature of the proposed street.

2. Petitioner shall cause the Plan to be revised to show the following additional or revised information which modifications shall be subject to review and approval of the Board prior to endorsement of the Plan:

a) The plan shall be revised to name Riverside Street as Riverside Street.
b) The Plan shall be revised to show a 15-foot landscape buffer easement along the southerly property line of Lot 103.

3. The waiver of street construction requirements, as fully set forth in paragraphs 1.a, 1.b, and 1.c is expressly conditioned upon and subject to the restriction that neither the owner nor any successor owner or owners of Lot 102 or 103 as shown on the Plan (hereinafter referred to individually as a Lot or collectively as the Lots) shall use the Lots for any purpose other than single-family residential use, two-family residential use or Lot owner home occupations as allowed under the Zoning By-Law, as shown on the Plan, as approved by the Board and recorded herewith, and there shall be no further division of the Lots as shown thereon without the prior written approval of the Planning Board. Lot 101 is to be accessed solely from Highland Avenue, not the private way, and is excluded from the obligations under the Homeowners Trust Agreement.

4. Each and every owner or owners of any Lot shall be jointly and severally responsible and liable, and shall fulfill all lot owners' obligations under a Homeowners Trust Agreement, for the costs of the maintenance, repair and reconstruction of the Private Way shown on the Plan and designated thereon and all services, (whether the services are located within the Private Way or in areas shown partially on the Private Way and partially on a Lot), the installation of which are required in connection with this approval, or which may be installed at any time, including, without limitation, maintenance, repair and reconstruction of roadways, water, sewer and drainage facilities and other utilities and related equipment, curbs, monuments, walkways, landscaping and street signs, as and whenever necessary, and including all actions of any kind or nature necessary or appropriate in order to maintain the Private Way in a good, safe and passable condition, including snow plowing, providing access from each Lot to a public way, as shown on the Plan, and providing adequate services to each Lot, all in accordance with these conditions.

5. Each and every owner or owners of Lots 102 and 103 shall be jointly and severally responsible and liable and shall fulfill all Lot owners' obligations under the Homeowners Trust Agreement, for all maintenance, repairs and reconstruction required for or on the Private Way in compliance with and in conformity with requirements of the Town of Needham and other requirements imposed by law or governmental authority.

6. The Trustees under the Homeowners Trust Agreement and each owner of a Lot shall not use or permit use of the Private Way for any purpose other than ingress and egress from the Lots by the residents of the Lots and their guests and invitees, such use to be limited to pedestrian and private-passenger vehicular traffic, and such other vehicular traffic as is necessary from time to time in cases of emergency, delivery of customary and usual household services and equipment or in connection with the maintenance, repair or reconstruction of the Private Way, the Lot, and any structures thereon and services installed thereon, or hereunder.

7. Neither the Lot owners nor the Trustees under the Homeowners Trust Agreement shall perform, nor shall they permit changes to be made to any Lot, which would impact the functionality or design of the drainage improvements as shown on the Plan.

8. Any and all maintenance, repair or reconstruction work performed on or to the Private Way or in connection with services installed thereon or hereunder by or at the direction of any owner or owners of any Lot or the Trustees under the Homeowners Trust Agreement as provided herein shall be carried out so as to ensure that no fill material nor any products or excavation or erosion resulting from or arising in connection with such work shall be discharged into any storm drainage system, and soil and other material or debris shall be removed from the site only if such removal will not impact the functionality or design of the drainage improvements shown on the Plan, and only to the extent necessary in connection with such work.

9. No Lot owner nor the Trustees under the Homeowners Trust Agreement shall at any time request that the Private Way be laid out or accepted as a public way in the Town of Needham unless such owner or owners or Trustees at its or their sole expense, perform and complete such work as is necessary to cause the Private Way to comply with all standards and regulations of the Town of Needham without waiver, and obtain all permits and approvals required by law in connection therewith. If the Private Way is accepted by the Town of Needham as a public way at any time, then the provisions hereof applicable to ownership and maintenance of the Private Way shall thereupon terminate.

10. No Lot owner nor the Trustees under the Homeowners Trust Agreement, shall at any time request or petition that any drainage system, water pipes, sewer pipes or related equipment or any other improvement within the subdivision for which design or improvement requirements have been waived by the Board as provided herein, be accepted or maintained by the Town of Needham.

11. The Town of Needham and its designees shall have the right to enter upon the Private Way for all purposes for which public ways are used in the Town of Needham.

12. In any sale or transfer by the owner or any successor owner of any of the Lots, the deed or other instrument shall refer to and incorporate conditions 3 through 11 inclusive and a) any conveyance of Lot 102 and Lot 103 shall include transfer of a fee interest or the perpetual right and easement to use the Private Way in common with others lawfully entitled thereto for all purposes for which public ways in the Town of Needham may now or hereafter be used consistent with the provisions hereof, and the b) subsurface areas, equipment and facilities used and maintained in connection with the provision of water, sewer, drainage and other utility services provided to the conveyed premises. Any deed or other instrument purporting to transfer or convey any interest in any Lot or Lots which does not expressly refer to and incorporate these conditions shall nevertheless be deemed to contain the same and in all events shall be subject thereto.

13. The Petitioner shall deliver to the Board a Restrictive Covenant incorporating conditions 3 through 11 inclusive of this decision in a form suitable for recording in the Registry of Deeds that shall run with the land and shall be enforceable by the Town. Such restriction shall only affect and encumber Lots 102 and 103 and shall be referenced on the Plan and shall be recorded therewith. Said covenant shall be enforceable in perpetuity or for the longest period permitted by law and in any event for 100 years.

14. Lot 102 may be accessed from either Riverside Street or the new Private Way and Lot 103 shall be accessed solely from the new Private Way with no vehicular access for such lot provided directly to Riverside Street. Vehicular access to the new Private Way shall be limited to said Lots 102 and 103 as shown on the Plan. Lot 101 is to be accessed solely from Highland Avenue. Lot 101 shall not be accessed from the new roadway.

15. There shall be no alteration or change to a Lot so as to affect the drainage system for any Lot, or the drainage systems running across a Lot, as shown on the Plan, as modified by this decision, without the prior written approval of the Planning Board or Town Engineer as noted below. Any Lot owner who proposes to make a change from the approved Plan shall first file a copy of a plan depicting the proposed changes with the Needham Town Engineer, with a request for a determination as to whether the changes affect the drainage system. If the Town Engineer determines that the changes affect the drainage system, or if the Town Engineer fails to respond to the request for a determination within 45 days, the Lot owner may file the plan with the Planning Board for its review. In such event, the Lot owner shall file with the Planning Board such information as the Planning Board determines necessary for its review. The Planning Board shall hold a public hearing within 60 days of receiving a complete filing. After said public hearing, the Board may, in its sole discretion, find that the proposed changes do not appear to negatively impact down gradient property owners or interfere with the functioning of the drainage system(s) of the Lot or subdivision. In such event the Lot owner, only upon receipt of a written decision from the Planning Board, may implement the changes as shown on the new plan.

16. Off-street drainage surety in the amount of $10,500.00 shall be posted ($3,500.00 per lot) prior to the release of Lots 101, 102 and 103 inclusive as shown on the Plan for purposes of building or conveyance. As recommended in the memo of the Board of Health dated August 20, 2024, all lots shall be graded to the limits of construction so as to have no standing water and/or otherwise create a public health nuisance. Grading shall not improperly shed or illegally increase drainage onto adjacent properties. All subsequent developers or builders shall be notified of the off-street drainage bond and the specific off-street drainage requirements. If required by the Board of Health, an as-built certified grading plan(s) of all or any of the lots shall be submitted prior to release of the drainage surety.

17. Each record owner, whether one or more persons or entities of title to Lots 102 and 103, as shown on the Plan, shall maintain and keep operational their respective roof drainage system in accordance with the Plan, as approved by this decision and as further described in the Stormwater Management Report, prepared by Land Design Collaborative, dated April 2024 (Exhibit 5).

18. Prior to plan endorsement and in keeping with Phase II NPDES, Town of Needham as filed July 30, 2003, the Petitioner shall select a BMP topic under “Public Education and Outreach” and “Public Participation/Involvement” and shall implement said selected topic prior to the release of the subdivision lots.

19. The following safeguards shall be implemented during construction:

a. The hours of construction and construction related activities shall be limited to 7:30 a.m. to 6:00 p.m. Monday through Saturday.

b. 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 Riverside Street or Highland Avenue. The designee shall supply a phone number where the designee can be reached 24 hours per day.

c. 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 or materials to or from the site and keeping South Street clean of dirt and debris and watering appropriate portions of the construction site from time to time as may be necessary.

20. Prior to site alteration the Petitioner shall mark in the field those trees which the landscape plan indicates will be retained. Such trees identified to be preserved shall be distinguished with appropriate markings, which may include surrounding fences or stakes. Any such trees removed which were identified for retention shall be replaced with trees of similar quality and caliper or as otherwise approved by the Board.

21. A Department of Environmental Protection sewer extension and connection permit may be required to service the subdivision and Lots 102 and 103. If required, approval of this subdivision is subject to the granting by the Select Board and the Department of Environmental Protection of a Sewer Extension and Connection Permit.

22. Any and all special permits required by the Massachusetts Water Resources Authority shall be obtained at the expense of the Petitioner.

23. A special sewer connection permit program fee shall be provided for Lots 102 and 103, as and to the extent applicable.

24. Grade adjustment rings are not permitted to adjust gate boxes and/or other castings. The Petitioner shall use appropriately sized castings.

25. All catch basins shall remain functional at all times. Rims shall be set at binder elevation and shall be adjusted to finish course elevation prior to placement of the top course of pavement.

26. If the binder course of pavement is exposed to one winter season, it shall be chipsealed prior to September l of the following winter season. If the roadway work is not completed prior to the third winter season, road reconstruction may be required by the Director of Streets.

27. No openings in the pavement shall be made after the chipseal has been laid between September l and April l.

28. The construction, operation and maintenance of the subdivision shall be conducted in accordance with the EPA's Memorandum of Understanding signed by the Board of Selectmen.

29. "As-built" construction plans of the sewer, water and drainage utilities shall be submitted to the Department of Public Works and the Board for review and approval prior to release of the respective performance bond amounts.

30. All future sewer tie-ins to properties located outside of this subdivision shall be accomplished in a manner consistent with the “Town of Needham Master Plan of Connection to the MWRA Sewer” dated January 8, 1988, (as revised) and prepared by the Needham Public Works, Sewer Division.

31. Prior to the commencement of any street construction within the subdivision, the location of future street lighting, location of fire alarm circuits and outlets, and the location of underground power to serve these, as applicable, shall be shown on an amended version of the definitive utility plan to be filed with the Board and Public Works Department.

32. The provisions of M.G.L., Chapter 131, Section 40 and 40A and the Needham Wetlands Protection By-Law shall be satisfied.

33. All construction staging and parking shall be on-site. No construction parking shall be permitted on Riverside Street or Highland Avenue or on any other public street.

34. All areas where utilities are proposed shall be compacted to the satisfaction of the Public Works Department.

35. In the absence of any details or waivers set forth herein, the current Subdivision Regulations and Procedural Rules of the Planning Board shall govern and are hereby made a part of this decision. All construction details not specifically shown on the approved Plan shall conform to Department of Public Works specifications.

36. The developer is directed to submit the Subdivision Inspection Form during all phases of construction as required, in accordance with Appendix E of the Subdivision Regulations and Procedural Rules of the Planning Board.

37. Notwithstanding the provisions of the Town of Needham, Subdivision Rules and Procedural Rules of the Planning Board, the Petitioner shall have two years from the date of endorsement of the Plan to complete the installation and construction of the new Private Way, and the services provided therein, in accordance with the applicable Subdivision Regulations and Procedural Rules of the Planning Board. Failure to so complete shall automatically rescind approval of the Subdivision Plan.

38. The Petitioner shall enter a written agreement to guarantee completion, once commenced, of the required improvements for all lots in the Subdivision, as shown on the Plan, with such construction and installation to be additionally secured by one of the methods delineated under the provisions of Section 3.5.1. Such agreement shall be subject to review and approval of the Board prior to endorsement of the Plan.

39. The Petitioner shall deliver to the Board for its approval a duly executed easement deed to the Town of Needham granting to the Town the right to pass on foot or by vehicle over the Private Way a Subdivision Covenant, a Landscape Buffer Planting Strip Covenant and Restriction, a Restrictive Covenant and Homeowners Trust Agreement, all as may be required and as shown on the Plan ("the Documents"). The Documents shall be subject to review and approval of the Board prior to endorsement of the Plan. The Documents shall be referenced on the Plan and all documents shall be recorded with the Plan.

40. Prior to the release of either Lot 102 or Lot 103 for building or sale, copies of the recorded instruments described in paragraphs 13 and 39 of this decision and copies of the recorded plan shall be provided to the Director of Planning and Community Development.

41. The Petitioner shall present the Plan to the Board for proper endorsement within ninety (90) days of the date this decision is executed unless such time period is extended, in writing, by the

Board. The Board reserves the right to rescind its approval if said Plan is not presented to the Board for endorsement within the time period herein specified. Further, the Petitioner or his authorized representative shall submit the Plan to the Director of Planning and Community Development fourteen (14) days in advance of its presentation to the Board to allow adequate time to review the revised Plan for compliance with the Conditions of this decision.

The foregoing has been stated for the purpose of emphasizing their importance and are not intended to be all inclusive or to negate any provision of the Town of Needham, Subdivision Rules and Procedural Rules of the Planning Board.

Under the provisions of the Town of Needham, Subdivision Regulations and Procedural Rules of the Planning Board and Massachusetts General Laws, Chapter 41, Sections 81-K through 81-GG, inclusive, the Board shall have the power to modify or amend the terms and conditions of this approval after due notice on the application of the owner, lessee or mortgagee of the premises or upon its own motion. All the provisions of the Subdivision Control Law applicable to approval shall, where appropriate, be applicable to such modification or amendment. Such power is hereby reserved. Appeals, if any, shall be made pursuant to Section 81-BB of the Massachusetts General Laws, Chapter 41, and shall be filed within twenty (20) days after the date of filing this decision with the Town Clerk.

The provisions of this Approval and Conditions shall be binding upon every owner or owners of each of the lots, as shown on the Plan, and the executors, administrators, heirs, successors and assigns of such owners, and the obligations and restrictions herein set forth shall run with said land in full force and effect for the benefit of and enforceable by the Town of Needham. Reference to this Approval shall be entered upon the Plan and this Approval shall be recorded in the Norfolk Registry of Deeds with the Plan.

Witness our hands this 19th day of November, 2024

NEEDHAM PLANNING BOARD

_____
Natasha Espada, Chair

_____
Artie Crocker

_____
Adam Block

_____
Paul S. Alpert

_____
Justin McCullen

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss _____2024

On this _____day of _____, 2024, before me, the undersigned notary public, personally appeared _____, one of the members of the Planning Board of the Town of Needham, Massachusetts, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the proceeding or attached document, and acknowledged the foregoing to be the free act and deed of said Board before me.

_____
Notary Public name:
My Commission Expires: _____

TO WHOM IT MAY CONCERN: This is to certify that the 20-day appeal period on the approval of the Project proposed by 40 Highland Ave, LLC, 435E Dedham Street Newton, MA 02459, for Property located at 40 Highland Avenue and 14-16 Riverside Street, Needham, Norfolk County, Massachusetts, has passed,

____and there have been no appeals filed in the Office of the Town Clerk or
____there has been an appeal filed.

_____ _____
Date Louise Miller, Town Clerk

Copy sent to:

Petitioner-Certified Mail # _____	Board of Selectmen	Board of Health
Town Clerk	Engineering	Director, PWD
Building Commissioner	Fire Department	Design Review Board
Conservation Commission	Police Department	
Parties in Interest	George Giunta Jr., Attorney	

From: wpiersiak@comcast.net
To: Thomas Ryder; Lee Newman; Alexandra Clee; Robert T. Smart, Jr.
Subject: Heather Lane and Heather Lane Extension Bond release
Date: Monday, October 28, 2024 2:02:56 PM

Dear All,

I would like to formally request any outstanding bond money be released regarding the above mentioned development. Further, I would like to be placed on the first meeting's agenda after any necessary inspections have been completed.

Letters from Tom Ryder dated June 6 and June 7, 2022 to the Needham Planning Board indicate amounts still held of $28,000.00 and $95,000.00 for Heather Lane Extension and Heather Lane, respectively.

I am available at your convenience to walk the site and review the work.

Best,

Bill Piersiak
617 759 9820

Sent from my iPhone

PLANNING & COMMUNITY DEVELOPMENT
PLANNING DIVISION

MEMORANDUM

TO: Thomas Ryder –Engineering Department

CC: Carys Lustig – Public Works Department

FROM: Planning Department

DATE: October 30, 2024

SUBJECT: **Reduction of Surety -** DEFINITIVE SUBDIVISION PLANS
Heather Lane Definitive Subdivision
764, 766, 768-768A & 768B Chestnut Street, Needham, MA

Enclosed please find a copy of an email from Bill Piersiak, directed to Lee Newman, Director of Planning and Community Development, dated October 28, 2024. Mr. Piersiak is requesting the reduction of the surety being held for roadway improvements on the Heather Lane Definitive Subdivision.

The Town is presently holding $109,000.00. This amount includes $95,000.00 to be held for roadway improvements in accordance with the recommendations of the Needham Public Works Department and $14,000.00 to be held for off-street drainage in accordance with the recommendations of the Board of Health. The off-street drainage surety is being held for Lots 1, Lot 3, Lot 5 and Lot 6.

Please review this request and provide the Planning Board with a recommendation relative to the reduction of the above-described performance surety. The Planning Board will be considering this request at its meeting of Tuesday, November 19, 2024, and would appreciate receiving your recommendation by Wednesday November 13, 2024.

For your review I have enclosed your original bond estimate and Mr. Piersiak's request.

Thank you for your attention to this matter.

TOWN OF NEEDHAM, MASSACHUSETTS
PUBLIC WORKS DEPARTMENT
500 Dedham Avenue, Needham, MA 02492
Telephone (781) 455-7550 FAX (781) 449-9023

November 18, 2024

Needham Planning Board
Public Service Administration Building
Needham, MA 02492

RE: Definitive Subdivision- Heather Lane
Off Chestnut Street-Request for Bond to release Lots

Dear Members of the Board:

The Department of Public Works has conducted several inspections of the subdivision. Per your request the following is an updated estimate of the remaining work required for the above referenced project.

Our estimate to complete this work is calculated as follows:

Item	Unit	Unit Price		Amount
Bounds	LS	$5,500		$5,500
Asbuilt Plans/NPDES	LS	$6,000		$7,000
		Subtotal	$12,500	
~ 15% Engineering and Contingency				$14,500
		Subtotal	$14,500	
~ 2.0% inflation per year for 2-years		TOTAL:		**$15,000**

If you have any questions regarding the above, please contact our office at 781-455-7538.

Truly yours,

Sincerely,

Thomas A Ryder
Town Engineer

PLANNING & COMMUNITY DEVELOPMENT
PLANNING DIVISION

MEMORANDUM

TO: Thomas Ryder –Engineering Department

CC: Carys Lustig – Public Works Department

FROM: Planning Department

DATE: October 30, 2024

SUBJECT: **Reduction of Surety -** DEFINITIVE SUBDIVISION PLANS
Heather Lane EXTENSION Definitive Subdivision
768 and 768A Chestnut Street, Needham, MA

Enclosed please find a copy of an email from Bill Piersiak, directed to Lee Newman, Director of Planning and Community Development, dated October 28, 2024. Mr. Piersiak is requesting the reduction of the surety being held for roadway improvements on the Heather Lane Extension Definitive Subdivision.

The Town is presently holding $45,500.000. This amount includes $28,000.00 to be held for roadway improvements in accordance with the recommendations of the Needham Public Works Department and $17,500.00 to be held for off-street drainage in accordance with the recommendations of the Board of Health. The off-street drainage surety is being held for RC-Lot 1, RC-Lot 2, RC-Lot 3, RC-Lot 4, and RC-Lot 5.

Please review this request and provide the Planning Board with a recommendation relative to the reduction of the above-described performance surety. The Planning Board will be considering this request at its meeting of Tuesday, November 19, 2024, and would appreciate receiving your recommendation by Wednesday November 13, 2024.

For your review I have enclosed your original bond estimate and Mr. Piersiak's request.

Thank you for your attention to this matter.

TOWN OF NEEDHAM, MASSACHUSETTS
PUBLIC WORKS DEPARTMENT
500 Dedham Avenue, Needham, MA 02492
Telephone (781) 455-7550 FAX (781) 449-9023

November 18, 2024

Needham Planning Board
Public Service Administration Building
Needham, MA 02492

RE: Definitive Subdivision- Heather Lane Extension
768 and 768A Chestnut Street-Request for Bond to release Lots

Dear Members of the Board:

The Department of Public Works has conducted several inspections of the subdivision. Per your request the following is an updated estimate of the remaining work required for the above referenced project.

Our estimate to complete this work is calculated as follows:

Item	Unit	Unit Price		Amount
Asbuilt Plans/NPDES	LS	$7,000		$7,000
		Subtotal	$7,000	
~ 15% Engineering and Contingency				$8,000
		Subtotal	$8,000	
~ 2.0% inflation per year for 2-years		TOTAL:		**$8,500**

If you have any questions regarding the above, please contact our office at 781-455-7538.

Truly yours,

Sincerely,

Thomas A Ryder
Town Engineer

PLANNING & COMMUNITY DEVELOPMENT
PLANNING DIVISION

Planning Board Goals:

Beginning Fall 2024:

1. Large House Review (LHR) Committee
2. *If no referendum:* Design Guidelines for MBTA Communities Zoning
3. *If receive grant:* Parking Study
4. Accessory Dwelling Units, per state law

Other items:

- *If no referendum:* HONE recommendations – crescent, hersey any others?
- Technical Changes to By-Law
- Customary home occupation?
- Short term rentals?
- 888 Great Plain Avenue
- "Unlocking the Charles"
- Inclusionary Zoning
- Climate, sustainability goals
- DEI
- Dover amendment / site plan review by-laws for dover amendment
- Frontage – non residential, residential

Training:

Subdivision control law
Special permit
Site plan review

Planning Board
Planning Schedule 2024-2025

		2025									
November	December	January	February	March	April	May	June	July	August	September	October
						ATM/SPTM					SPTM
Housing											
Inclusionary zoning											
ADU per new state law							Bylaw Change				
Large House Review (LHR)	Study cmte			Community Mtg			Community Mtg			Hearing/finalize language	Bylaw Change
Commercial											
Great Plain (to Warren)											
Parking bylaw											
Unlocking the Charles											
Customary home occupations											
Climate Action											
Solar/solar ready requirement bylaw change											
Geothermal											
Sustainability goals											
Other / Misc											
Technical chnages							Bylaw Change				
D,E,I											
Applications											
Hearings											
Study											
Recommendation											

Draft Nov. 2024

Member	Seat
Justin McCullen	Planning Board Member / Planning Board Designee
Artie Crocker	Planning Board Member / Planning Board Designee
Heidi Frail	Select Board Member / Select Board Designee
Marianne Cooley	Select Board Member / Select Board Designee
Moe Handel	Design Review Board Member / Design Review Board Designee
Tina Burgos	Finance Committee Member / Finance Committee Designee
Nik Ligris	Zoning Board of Appeals Member / Zoning Board of Appeals Designee
	Real Estate Broker appointed by the Planning Board
	Developer appointed by the Planning Board
	Architect appointed by the Planning Board
	At Large appointed by the Planning Board
	At Large appointed by the Planning Board

FOR PB USE ONLY

NEEDHAM
ZONING BOARD OF APPEALS
AGENDA

WEDNESDAY, November 20, 2024 - 7:30PM

Charles River Room **Public Service Administration Building** **500 Dedham Avenue** **Needham, MA 02492**	**Also livestreamed on Zoom** **Meeting ID:820-9352-8479** **To join the meeting click this link:** https://us02web.zoom.us/j/82093528479

Minutes — Review and approve Minutes from October 17, 2024 meeting.

7:30 PM — **37 Moseley Avenue - Saybrook Construction, LLC**, *(Continued from October 17, 2024)* applied for a Variance pursuant to Sections 7.5.3, and MGL40A, Section 10, from the following provisions of Section 4.2.3 and any other applicable sections of the By-Law to permit the demolition of a deteriorated single family residential dwelling with detached garage and shed and to allow the construction of a new single-family residential dwelling with a side setback of 13.8 feet where 25 feet are required and a front yard setback of 20 feet where 30 feet are required. The lot contains 35,726 square feet, less than the required 43,560 square feet. The property is located at 37 Moseley Avenue, Needham, MA in the Single Residence A (SRA) Zoning District.

7:30 PM — **378 Manning Street** – Driftwood Landing, LLC *(To be Continued or Withdrawn – Status Unknown at this time)* applied for a Special Permit under Sections 1.4.7.4, and any other applicable Sections of the By-Law to permit the demolition, extension, alteration, enlargement and reconstruction of the lawful, pre-existing, non-conforming two-family dwelling and its replacement with a new two-family residence. The property is located in the Single Residential B District

7:45 PM — **77 Charles Street** – Elmo Fudburger, LLC. applied for a Special Permit to allow the use for indoor athletic or exercise facility under Section 3.2.6.2 and to waive strict adherence to the number of required parking and the parking plan and design requirements under Sections 5.1.1.5, 5.1.2, 5.1.3 and any other applicable sections of the By-Law to allow the operation associated with Burn Boot Camp. The property is located in the Mixed Use-128 (MU-128) zoning district.

8:00PM — **324 Chestnut Street** – Monsoon Indian Kitchen, Inc. applied for a Special Permit to allow the use for a take-out establishment dispensing prepared

foods, and more than one non-residential use on a lot under Section 3.2.2 and to waive strict adherence to the number of required parking and the parking plan and design requirements under Sections 5.1.1.5, 5.1.2, 5.1.3 and any other applicable sections of the By-Law to allow the operation of a take-out Indian restaurant. The property is located in the Chestnut Street Business (CSB) zoning district.

8:00 PM **250 Highland Avenue** –Rainbow Angel, Inc. applied for a Special Permit to allow the use for a dine-in restaurant with accessory take-out under Section 3.2.5.2 and to waive strict adherence to the number of required parking and the parking plan and design requirements under Sections 5.1.1.5, 5.1.2, 5.1.3 and any other applicable sections of the By-Law to allow the operation of a Taiwanese restaurant. The property is located in the Highland Commercial-128 (HC-128) zoning district.

8:15 PM **695 Highland Avenue** –DEI, Inc. applied for Plan Substitution, alteration or removal of conditions to provide relief to a Variance dated October 14, 1969, and to waive strict adherence to the number of required parking and the parking plan and design requirements under Sections 5.1.1.5, 5.1.2, 5.1.3, 7.5.3 and any other applicable sections of the By-Law to allow the operation of Dedham Savings Bank. The property is located in the Single Residence B (SRB) zoning district.

GEORGE GIUNTA, JR.
ATTORNEY AT LAW*
281 CHESTNUT STREET
NEEDHAM, MASSACHUSETTS 02492
*Also admitted in Maryland

TELEPHONE (781) 449-4520 FAX (781) 465-6059

October 8, 2024

Town of Needham
Zoning Board of Appeals
Needham, Massachusetts 02492

Attn: Daphne M. Collins, Zoning Specialist

Re: Saybrook Construction, LLC
37 Moseley Avenue, Needham, MA

Dear Ms. Collins,

In connection with the pending application of Saybrook Construction, LLC (hereinafter the Applicant and "Sayrbook") concerning the property known and numbered 37 Moseley Avenue, Needham, MA (hereinafter the "Premises"), submitted herewith, please find the following revised plans:

1. Architectural plans prepared by RAV & Assoc., 21 Highland Avenue, Needham, MA 02494, consisting of five (5) sheets, as follows: i. First Floor Plan; ii. Second Floor and Attic Plans; iii. Basement Plan; iv. Front and Rear Elevations; and v. Side Elevations;

2. Proposed Plot Plan, dated September 21, 2024, stamped September 29, 2024; and

3. Existing Conditions Plan, dated September 21, 2024, stamped September 29, 2024.

Please note that the house depicted in these plans matches the house approved by the Conservation Commission in connection with Order of Conditions, DEP No. 234-896, except that the garage portion, to the rear of the house, has been shifted to the west / southwest three feet, to move it farther away from an existing tree that is being preserved.

If they have not already, hard copies will be delivered to your office today. If you have any comments, questions or concerns, or if you require any further information, please contact me so that I may be of assistance.

Sincerely,

George Giunta, Jr.

TOWN OF NEEDHAM, MASSACHUSETTS
Building Inspection Department

Assessor"s Map & Parcel Number: 213 LOT 60

Building Permit No. _____ Zoning District: SRA

Lot Area 35,726 S.F. Address: 37 MOSELEY AVENUE

Owner SAYBROOK CONSTRUCTION LLC Builder: MIKHAIL DEYCHMAN

DEMO/PROPOSED PLOT PLAN/FOUNDATION AS-BUILT/FINAL AS-BUILT

40' Scale

COMMONWEALTH OF MASSACHUSETTS
A. MATTHEW BELSKI, JR.
No. 37557
PROFESSIONAL

9/29/24

Note: Plot Plans shall be drawn in accordance with Sections 7.2.1 and 7.2.2 of the Zoning By-Laws for the town of Needham. All plot plans shall show existing structures and public utilities, including water mains, sewers, drains, gaslines, etc.; driveways, Flood Plain and Wetland Areas, lot dimensions, dimensions of proposed structures, sideline offsets and setback distances, (allowing for overhangs) and elevation of top of foundations and garage floor. For new construction, elevation of lot corners at streetline and existing and approved street grades shall be shown for grading along lot line bordering streetline. For pool permits, plot plans shall also show fence surrounding pool with a gate, proposed pool and any accessory structures*, offsets from all structures and property lines, existing elevations at nearest house corners and pool corners, nearest storm drain catch basin (if any) and, sewage disposal system location in unsewered area.
(*Accessory structures may require a separate building permit— See Building Code)

I hereby certify that the information provided on this plan is accurately shown and correct as indicated.
The above is subscribed to and executed by me this 21 day of SEPTEMBER 2024.
Name A. MATTHEW BELSKI, JR. Registered Land Surveyor No. 37557
Address 35 MAPLE ST. City W. NEWBURY State MA Zip _____ Tel. No. (978) 363-8130
Approved _____ Director of Public Works Date _____
Approved _____ Building Inspector Date _____

TOWN OF NEEDHAM, MASSACHUSETTS
Building Inspection Department

Assessor"s Map & Parcel Number: 213 LOT 60

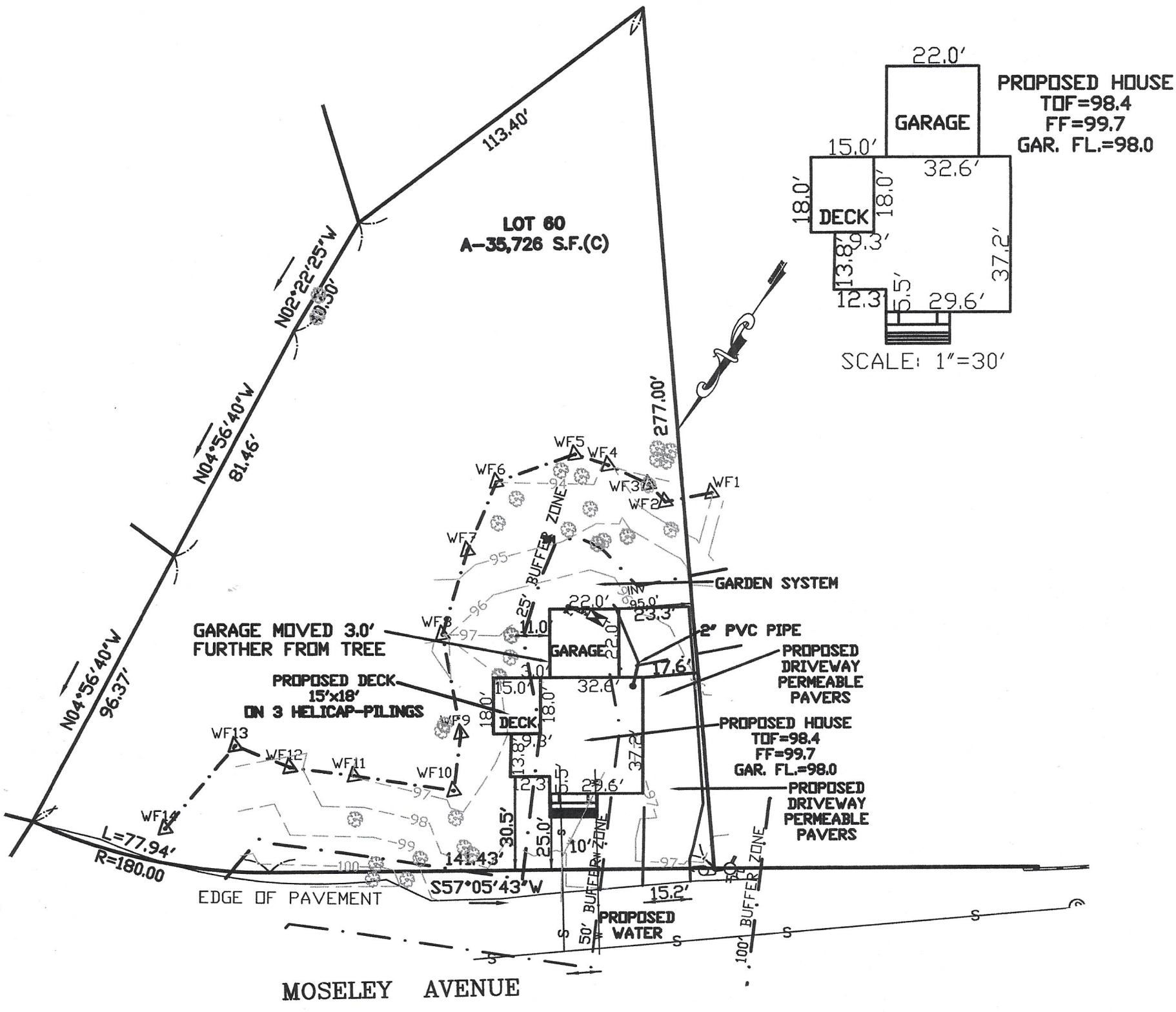
Building Permit No. _____ Zoning District: SRA

Lot Area 35,726 S.F. Address: 37 MOSELEY AVENUE

Owner SAYBROOK CONSTRUCTION LLC Builder: MIKHAIL DEYCHMAN

DEMO/PROPOSED PLOT PLAN/FOUNDATION AS-BUILT/FINAL AS-BUILT

40' Scale



HEIGHT OF DWELLING 35.0'
FROM AVERAGE GRADE
TO THE RIDGE OF ROOF

COMMONWEALTH OF MASS. A. MATTHEW BELSKI, JR. No. 37557 PROFESSIONAL

9/29/24

Note: Plot Plans shall be drawn in accordance with Sections 7.2.1 and 7.2.2 of the Zoning By-Laws for the town of Needham. All plot plans shall show existing structures and public utilities, including water mains, sewers, drains, gaslines, etc.; driveways, Flood Plain and Wetland Areas, lot dimensions, dimensions of proposed structures, sideline offsets and setback distances, (allowing for overhangs) and elevation of top of foundations and garage floor. For new construction, elevation of lot corners at streetline and existing and approved street grades shall be shown for grading along lot line bordering streetline. For pool permits, plot plans shall also show fence surrounding pool with a gate, proposed pool and any accessory structures*, offsets from all structures and property lines, existing elevations at nearest house corners and pool corners, nearest storm drain catch basin (if any) and, sewage disposal system location in unsewered area.
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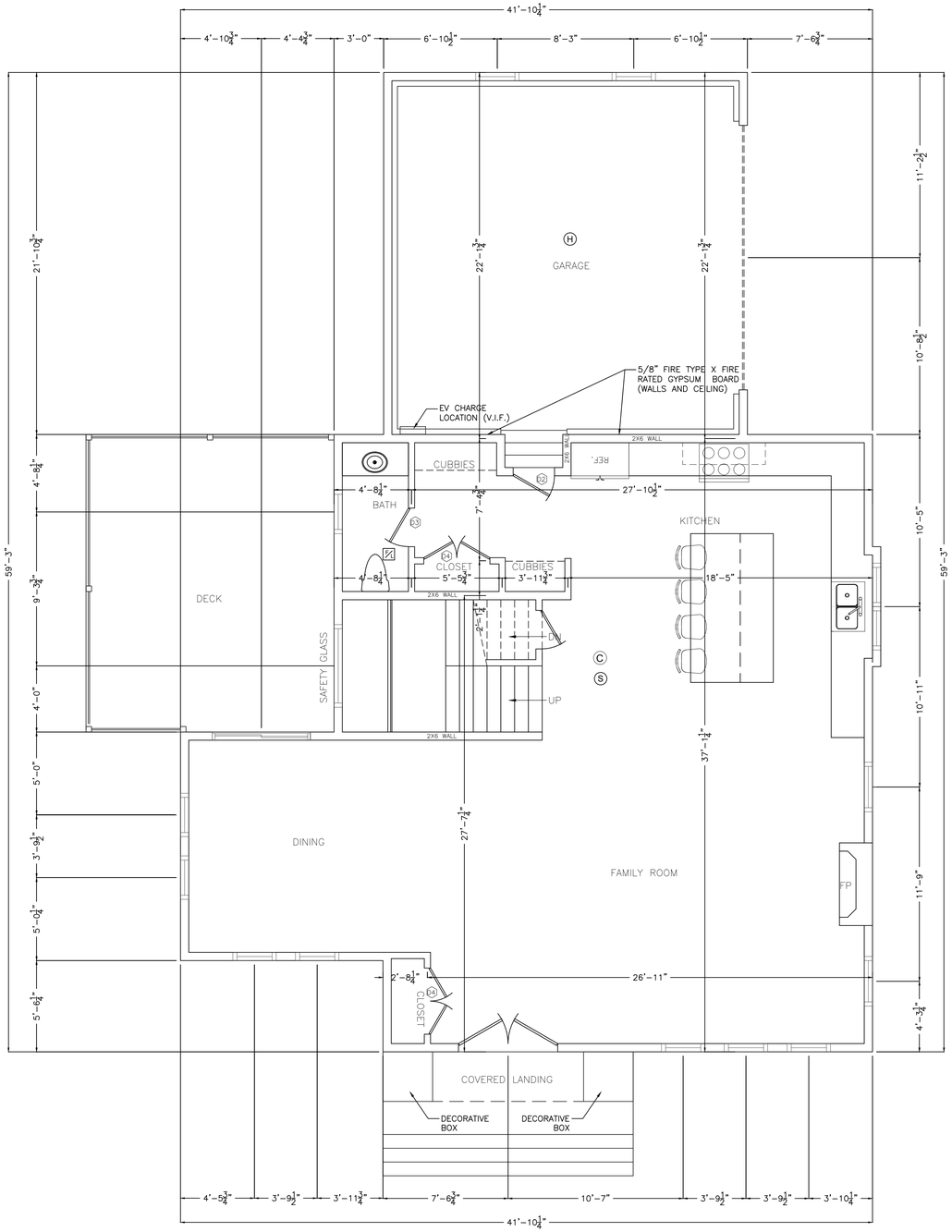
Name A. MATTHEW BELSKI, JR. Registered Land Surveyor No. 37557
Address 35 MAPLE ST. City W. NEWBURY State MA Zip _____ Tel. No. (978) 363-8130
Approved _____ Director of Public Works Date _____
Approved _____ Building Inspector Date _____



FIRST FLOOR PLAN

GENERAL NOTES

1. ALL WORK SHALL CONFORM TO MASSACHUSETTS BUILDING CODE AND ALL FEDERAL, STATE AND TOWN OF NEEDHAM LAWS, CODES AND REGULATIONS AS EACH MAY APPLY.

2. ALL EXISTING CONDITIONS MUST BE VERIFIED IN FIELD. IF DISCREPANCIES ARE FOUND, THEY HAVE TO BE REPORTED TO THE ENGINEER PRIOR TO START OF WORK. OMISSIONS OR CONFLICTS BETWEEN THE VARIOUS ELEMENTS OF THE WORKING DRAWINGS AND/OR THE SPECIFICATIONS SHALL BE BROUGHT TO THE ATTENTION OF THE ENGINEER PRIOR TO THE START OF SUCH WORK.

3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATING THE SCHEDULING AND WORK OF ALL TRADES AND SHALL CHECK ALL DIMENSIONS. ALL DISCREPANCIES SHALL BE CALLED TO THE ATTENTION OF THE ENGINEER AND SHALL BE RESOLVED PRIOR TO PROCEEDING WITH THE WORK.

4. THE CONTRACTOR SHALL SUPERVISE AND DIRECT THE WORK AND SHALL BE SOLELY RESPONSIBLE FOR THE CONSTRUCTION MEANS, METHODS, TECHNIQUES, SEQUENCES AND PROCEDURES, INCLUDING BUT NOT LIMITED TO BRACING AND SHORING.

5. THE CONTRACTOR AGREES THAT IN ACCORDANCE WITH GENERALLY ACCEPTED CONSTRUCTION PRACTICES, THE CONTRACTOR SHALL ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR THE JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION, INCLUDING THE SAFETY OF ALL PERSONS AND PROPERTY, AND THAT THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS.

6. ALL WORK SHALL BE PERFORMED IN A FIRST CLASS AND WORKMANLIKE MANNER IN CONFORMITY WITH THE PLANS AND SPECIFICATIONS, AND SHALL BE IN GOOD USABLE CONDITION AT THE COMPLETION OF THE PROJECT.

7. THE CONTRACTOR SHALL FIELD VERIFY ALL EXISTING CONDITIONS, UTILITY LOCATIONS AND STRUCTURE PLACEMENT, PRIOR TO START OF THE WORK. THE CONTRACTOR WILL OBSERVE ALL POSSIBLE PRECAUTIONS TO AVOID DAMAGE TO SAME. ANY DAMAGE TO EXISTING STRUCTURES AND UTILITIES, WHETHER SHOWN OR NOT ON THE DRAWINGS, SHALL BE REPAIRED OR REPLACED AT THE CONTRACTOR'S EXPENSE.

8. PRIOR TO BIDDING THE WORK THE CONTRACTOR SHALL VISIT THE SITE AND THOROUGHLY SATISFY HIMSELF AS TO THE ACTUAL CONDITIONS AND QUANTITIES, IF ANY. NO CLAIM AGAINST THE OWNER OR ENGINEER WILL BE ALLOWED FOR ANY EXCESS OR DEFICIENCY THEREIN, ACTUAL OR RELATIVE.

9. CONTRACTOR IS RESPONSIBLE FOR ALL DEMOLITION AND RELOCATION WORKS, IF ANY.

PROPOSED GFA (GROSS FLOOR AREA) CALCULATION:

ZONING DISTRICT: SR-A

PROPOSED FLOOR AREA OF THE BUILDING:

1. 1ST FLOOR: 1,322 SF

2. GARAGE 489 SF

3. 2ND FLOOR: 1,810 SF

4. ATTIC: 709 SF (WITHIN 5' WALL)

TOTAL PROPOSED FLOOR AREA OF THE BUILDING:

1,322 (1ST FL.) + 1,810 (2ND FL.) = 3,132 SF

INTERIOR DOORS SCHEDULE:

(D1) 2'-6" X 8'-0"
(D2) 2'-6" X 8'-0" FIRE RATED, 20M MIN
(D3) 2'-4" x 8'-0"
(D4) 4'-0" x 8'-0"
(D5) 5'-0" x 7'-0" UTILITY CLOSET

FOR EXTERIOR DOORS AND WINDOWS SEE WINDOW SCHEDULE AND BUILDING ELEVATIONS

DOOR HEIGHT TO BE VERIFIED WITH OWNER PRIOR TO DOOR ORDERING AND FRAMING

NOTE:
ALL FIRST FLOOR DOORS ARE 8' HEIGHT.
ALL SECOND FLOOR DOORS ARE 7' HEIGHT.
ALL BASEMENT DOORS ARE 7' HEIGHT.

NOTES:

1. ALL EXTERIOR WALLS ARE 2"x6" @ 16" O.C. UNLESS NOTED OTHERWISE.

2. ALL INTERIOR WALLS ARE 2"x4" @ 16" O.C. UNLESS NOTED OTHERWISE.

3. INTERIOR (DEMISING) WALL BETWEEN THE GARAGE AND THE BUILDING IS 2"x6" @ 16" O.C.

4. DIMENSIONS TO THE OUTSIDE (PERIMETER) WALLS ARE TO FACE OF STUDS OR EXTERIOR FACE OF THE FOUNDATION WALL.

5. INTERIOR DIMENSIONS SHOWN BETWEEN CENTERS OF THE INTERIOR WALLS.

(S) PHOTO ELECTRIC HARD WIRED SMOKE DETECTOR WITH SECONDARY (STANDBY) POWER SUPPLIED FROM MONITORED BATTERIES

FAN/LIGHT TO BE VENTED DIRECTLY TO OUTSIDE

(C) CARBON MONOXIDE DETECTOR

(H) HARD WIRED HEAT DETECTOR WITH SECONDARY (STANDBY) POWER SUPPLIED FROM MONITORED BATTERIES

DATE	REVISION
10/07/24	FOOTPRINT REVISED, GARAGE SHIFTED BY 3', FAR REVISED
05/30/24	LAYOUT REVISED
05/06/24	STAIRCASE REVISED

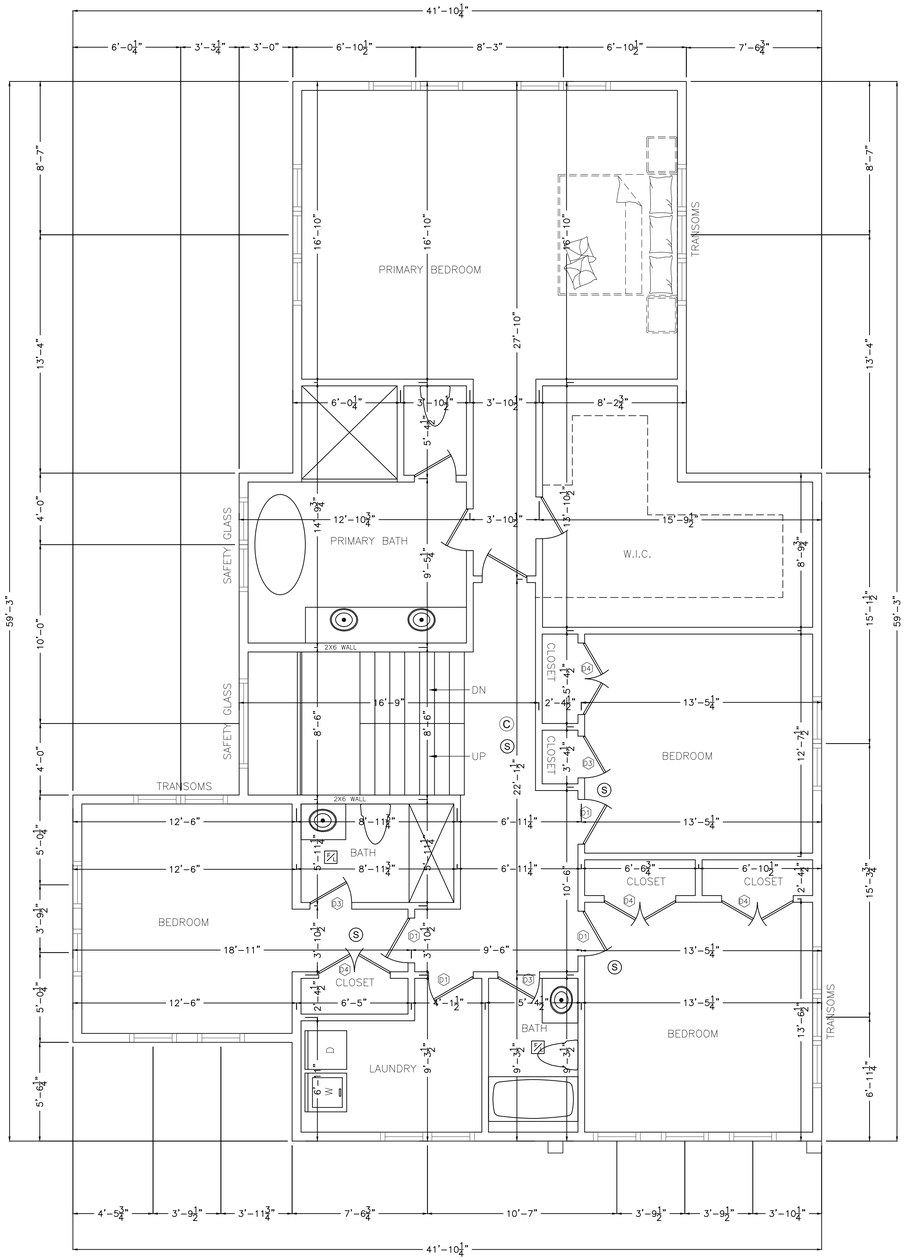
FIRST FLOOR PLAN

37 MOSELEY AVENUE,
NEEDHAM, MASSACHUSETTS

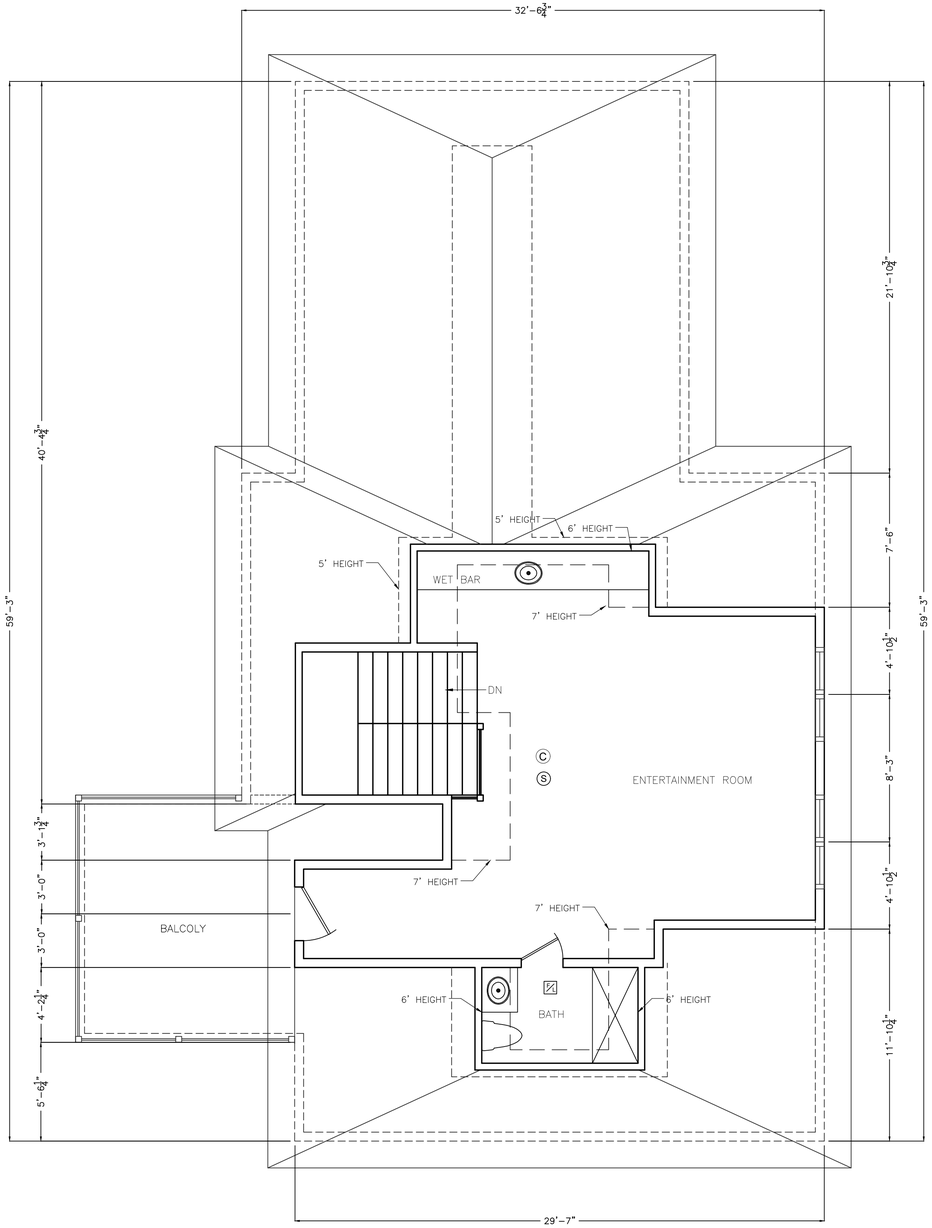
RAV & Assoc., Inc.
21 HIGHLAND AVENUE
NEEDHAM, MASSACHUSETTS 02494
TELEPHONE: (781) 449-8200 FAX: (781) 449-8205

COMMONWEALTH OF MASSACHUSETTS
RICHARD A. VOLAT
NO. 22
REGISTERED PROFESSIONAL ENGINEER

SCALE: 1/4"=1'-0"		
APPROVED: R.A.V.	DESIGNED BY: I.B.	DRAWING No.
	DRAWN BY: I.B.	A-1
DATE: 11/30/2023	CHECKED BY: R.A.V.	



SECOND FLOOR PLAN



ATTIC PLAN

INTERIOR DOORS SCHEDULE:

(D1) 2'-6" X 8'-0"
(D2) 2'-6" X 8'-0" FIRE RATED, 20M MIN
(D3) 2'-4" X 8'-0"
(D4) 4'-0" x 8'-0"
(D5) 5'-0" x 7'-0" UTILITY CLOSET

FOR EXTERIOR DOORS AND WINDOWS SEE WINDOW SCHEDULE AND BUILDING ELEVATIONS

DOOR HEIGHT TO BE VERIFIED WITH OWNER PRIOR TO DOOR ORDERING AND FRAMING

NOTE:
ALL FIRST FLOOR DOORS ARE 8' HEIGHT.
ALL SECOND FLOOR DOORS ARE 7' HEIGHT.
ALL BASEMENT DOORS ARE 7' HEIGHT.

(S) PHOTO ELECTRIC HARD WIRED SMOKE DETECTOR WITH SECONDARY (STANDBY) POWER SUPPLIED FROM MONITORED BATTERIES

FAN/LIGHT TO BE VENTED DIRECTLY TO OUTSIDE

(C) CARBON MONOXIDE DETECTOR

(H) HARD WIRED HEAT DETECTOR WITH SECONDARY (STANDBY) POWER SUPPLIED FROM MONITORED BATTERIES

NOTE:
ALL ATTIC FLOOR WINDOWS TO BE EQUIPPED WITH CHILD-PROOF LOCK

10/07/24	FOOTPRINT REVISED, GARAGE SHIFTED BY 3'
05/30/24	LAYOUT REVISED
05/06/24	STAIRCASE REVISED, ATTIC REVISED BASED ON NEW ROOF
DATE	REVISION

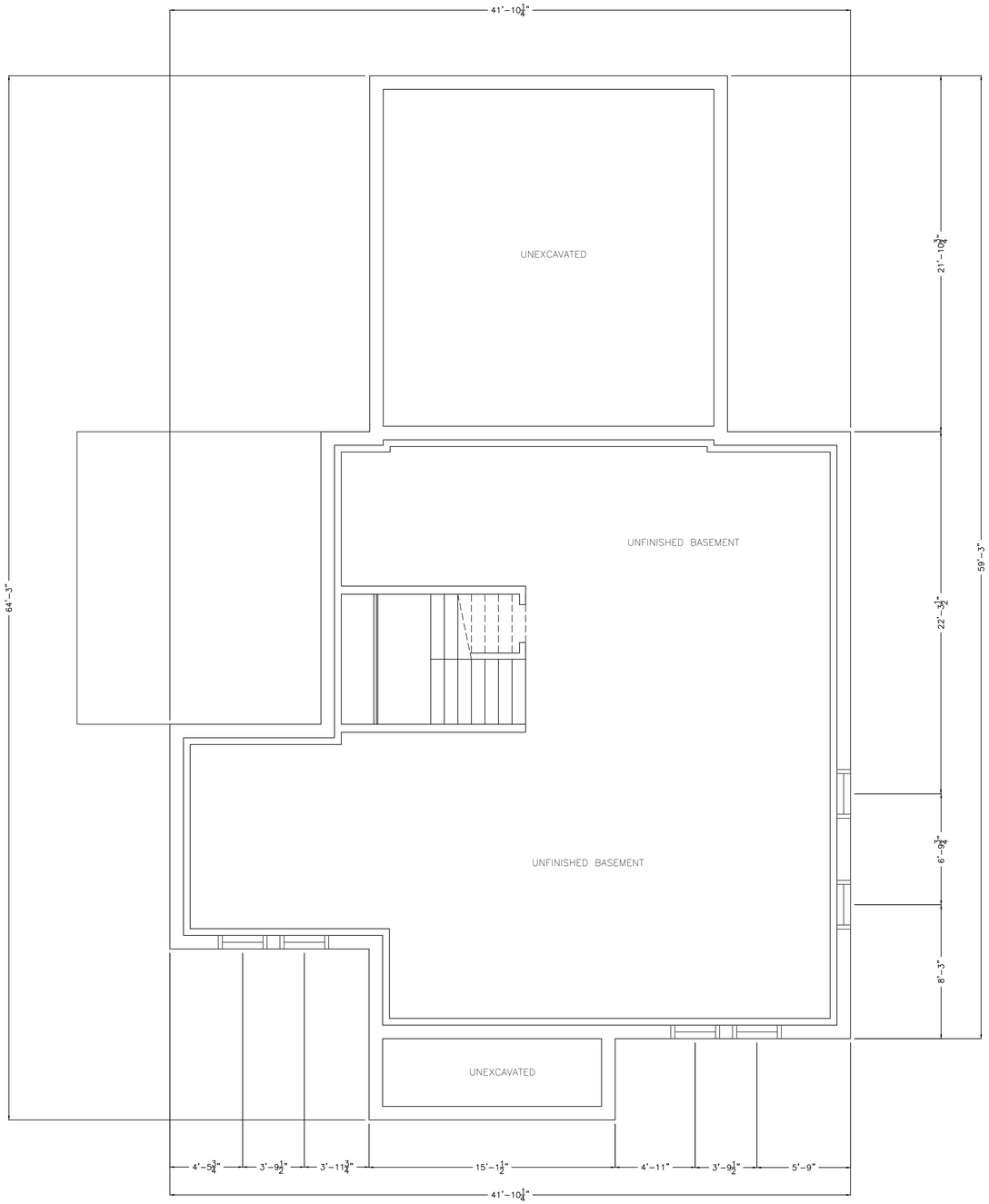
SECOND FLOOR AND ATTIC PLANS

37 MOSELEY AVENUE, NEEDHAM, MASSACHUSETTS

RAV & Assoc., Inc.
21 HIGHLAND AVENUE
NEEDHAM, MASSACHUSETTS 02494
TELEPHONE: (781) 449-8200 FAX: (781) 449-8205

COMMONWEALTH OF MASSACHUSETTS
RICHARD A. VISTEIN
No. 22744
REGISTERED PROFESSIONAL ENGINEER

SCALE: 1/4"=1'-0"		
APPROVED: R.A.V.	DESIGNED BY: I.B.	DRAWING No.
	DRAWN BY: I.B.	A-2
DATE: 11/30/2023	CHECKED BY: R.A.V.	



BASEMENT PLAN

DATE	REVISION

BASEMENT PLAN

37 MOSELEY AVENUE, NEEDHAM, MASSACHUSETTS

RAV & Assoc., Inc.
21 HIGHLAND AVENUE
NEEDHAM, MASSACHUSETTS 02494
TELEPHONE: (781) 449-8200 FAX: (781) 449-8205

COMMONWEALTH OF MASSACHUSETTS
RICHARD A. VOLK
NO. 22264
REGISTERED PROFESSIONAL ENGINEER

SCALE: 1/4"=1'-0"		
APPROVED: R.A.V.	DESIGNED BY: I.B.	DRAWING No.
	DRAWN BY: I.B.	A-3
DATE: 10/07/2024	CHECKED BY: R.A.V.	

EXTERIOR DOORS AND WINDOWS SCHEDULE

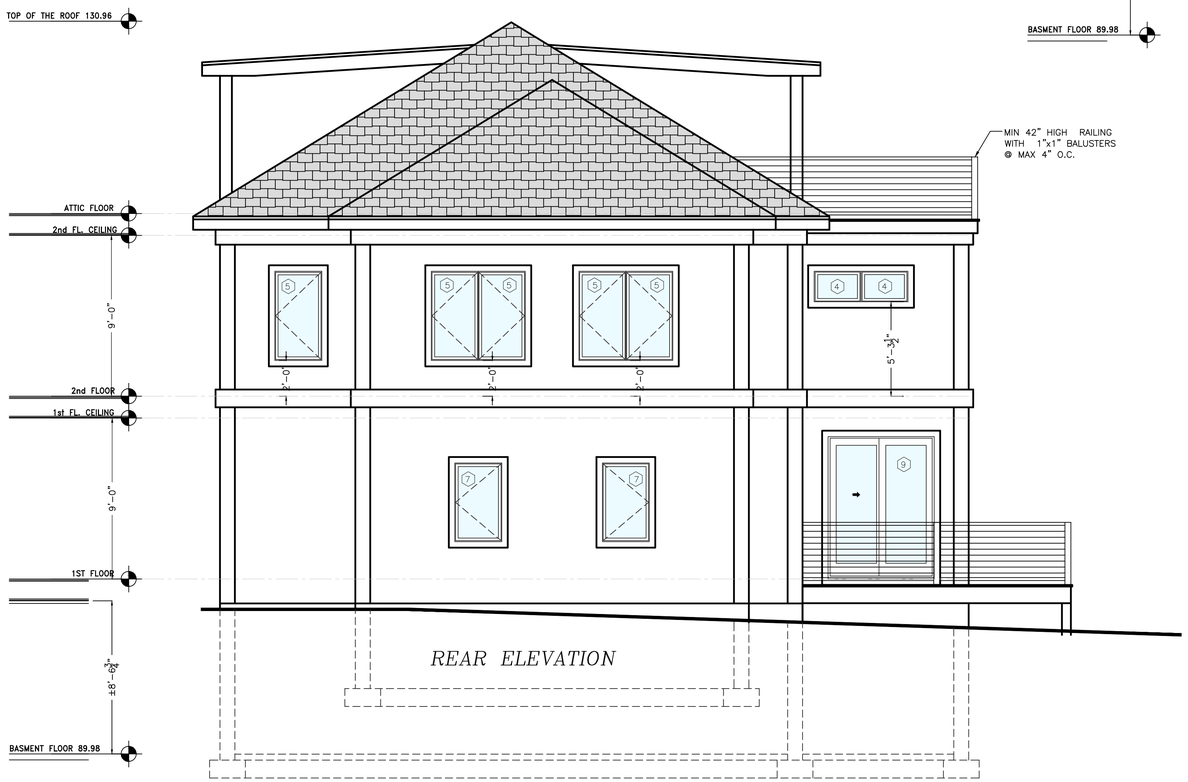
400-SERIES CASEMENT WINDOWS BY ANDERSEN WITH LOW-E INSULATING GLASS, UNLESS NOTED OTHERWISE

No.	UNIT DIMENSIONS	MODEL		REMARKS
1	6'-0" x 8'-0"	CUSTOM		ENTRY DOOR
2	2'-7 1/2" x 5'-11 7/8"	CX16	*	
3	2'-7 1/2" x 5'-4 13/16"	CX155	*	
4	2'-7 1/2" x 1'-8 1/2"	AN281		TRANSOM WINDOW
4A	2'-7 1/2" x 1'-8 1/2"	AN281		TRANSOM WINDOW, SAFETY GLASS
5	2'-7 1/2" x 4'-11 7/8"	CX15	*	
5A	2'-7 1/2" x 4'-11 7/8"	CX15	*	SAFETY GLASS
6	2'-7 1/2" x 4'-0"	CX14	*	
7	2'-7 1/2" x 4'-4 13/16"	CX145	*	
8	16'-0" x 9'-0"	CUSTOM		GARAGE DOOR
9	5'-11 1/4" x 7'-11 1/2"	FWG6080		SLIDING DOOR
10	2'-11 15/16" x 1'-8 1/2"	AN51		TRANSOM WINDOW, SAFETY GLASS
11	4'-11 7/8" x 4-11 7/8"	P5050		PICTURE WINDOW, SAFETY GLASS

* EGRESS WINDOW MEETS OR EXCEEDS CLEAR OPENING OF 5.7 SF, CLEAR WIDTH 20" AND CLEAR HEIGHT 24"

Δ MEET CLEAR OPENING WIDTH OF 20" USING SILL HINGE CONTROL BRACKET W/ SPLIT-ARM OPERATOR SPECIFIED (BRACKET CAN BE PIVOTED FOR CLEANING POSITION) & MEET CLEAR OPENING WIDTH OF 22" WITH STRAIGHT-ARM OPERATOR SPECIFIED.

FRONT ELEVATION



REAR ELEVATION

NOTES:

CONTRACTOR MUST VERIFY ALL SIZES AND ROUGH OPENINGS PRIOR TO ORDERING WINDOWS.
CONTACT WINDOW MANUFACTURER FOR DETAILS. CONTACT THE OWNER FOR FINAL SELECTION OF DOORS AND WINDOWS PRIOR TO ORDERING AND PRIOR TO FRAMING DOOR AND WINDOW OPENINGS.
VERIFY CLEAR OPENINGS IN ALL BEDROOMS. MINIMUM CLEAR OPENING MUST BE 20 IN (W) x 24 IN (H) AND HAVE MINIMUM OF 5.7 S.F. OF CLEAR OPEN AREA FOR ANY WINDOW EXCEPT OF DOUBLE HUNG WINDOW (3.3 S.F. OF CLEAR OPEN AREA FOR DOUBLE HUNG WINDOW).
VERIFY LOCATIONS OF SAFETY GLASS WINDOWS AND DOORS PRIOR TO ORDERING WINDOWS AND DOORS.

SPECIFIC LOCATIONS:
1. GLAZING IN INGRESS AND MEANS OF EGRESS DOORS;
2. GLAZING IN FIXED AND SLIDING PANELS OF SLIDING DOORS AND SWINGING DOORS;
3. GLAZING IN STORM DOORS;
4. GLAZING IN UNFRAMED SWINGING DOORS;
5. GLAZING IN DOORS AND ENCLOSURES FOR BATHTUBS, STEAM ROOMS AND SHOWERS. GLAZING IN ANY PORTION OF A BUILDING WALL ENCLOSING THESE COMPONENTS WHERE THE BOTTOM EXPOSED EDGE OF THE GLAZING IS LESS THAN 60 INCHES ABOVE A STANDING SURFACE.
6. GLAZING IN AN INDIVIDUAL FIXED OR OPERABLE PANEL ADJACENT TO A DOOR WHERE THE NEAREST EXPOSED EDGE OF THE GLAZING IS WITHIN A 24-INCH ARC OF EITHER VERTICAL EDGE OF THE DOOR IN A CLOSED POSITION AND WHERE THE BOTTOM EXPOSED EDGE OF THE GLAZING IS LESS THAN 60 INCHES ABOVE THE WALKING SURFACE.
7. GLAZING IN AN INDIVIDUAL FIXED OR OPERABLE PANEL WHICH MEETS THE FOLLOWING CONDITIONS:
   a) EXPOSED AREA OF AN INDIVIDUAL PANE GREATER THAN 9 S.F.;
   b) EXPOSED BOTTOM EDGE LESS THAN 18 INCHES ABOVE THE FLOOR;
   c) EXPOSED TOP EDGE GREATER THAN 36" ABOVE THE FLOOR;
   d) ONE OR MORE WALKING SURFACES WITHIN 36 INCHES HORIZONTALLY OF THE PLANE OF THE GLAZING.

NOTE:
ALL ATTIC FLOOR WINDOWS TO BE EQUIPPED WITH CHILD-PROOF LOCK

DATE	REVISION
10/07/24	FOOTPRINT REVISED, GARAGE SHIFTED BY 3'
05/30/24	ELEVATIONS REVISED BASED ON NEW ROOF
05/06/24	ELEVATIONS REVISED BASED ON NEW ROOF

COMMONWEALTH OF MASSACHUSETTS — RICHARD A. VOLTERRA — No. 22003 — REGISTERED PROFESSIONAL ENGINEER

FRONT AND REAR ELEVATIONS

37 MOSELEY AVENUE, NEEDHAM, MASSACHUSETTS

RAV & Assoc., Inc.
21 HIGHLAND AVENUE
NEEDHAM, MASSACHUSETTS 02494
TELEPHONE: (781) 449-8200 FAX: (781) 449-8205

SCALE: 1/4"=1'-0"

APPROVED: R.A.V.
DATE: 11/30/2023
DESIGNED BY: I.B.
DRAWN BY: I.B.
CHECKED BY: R.A.V.
DRAWING No. A-4

DATE	REVISION
10/07/24	FOOTPRINT REVISED, GARAGE SHIFTED BY 3'
05/30/24	ELEVATIONS REVISED BASED ON NEW ROOF
05/06/24	ELEVATIONS REVISED BASED ON NEW ROOF

SIDE ELEVATIONS

37 MOSELEY AVENUE, NEEDHAM, MASSACHUSETTS

RAV & Assoc., Inc.
21 HIGHLAND AVENUE
NEEDHAM, MASSACHUSETTS 02494
TELEPHONE: (781) 449-8200 FAX: (781) 449-8205

COMMONWEALTH OF MASSACHUSETTS
RICHARD A. VOLK
No. 22,224
REGISTERED PROFESSIONAL ENGINEER

SCALE: 1/4"=1'-0"		
APPROVED: R.A.V.	DESIGNED BY: I.B.	DRAWING No.
	DRAWN BY: I.B.	A-5
DATE: 11/30/2023	CHECKED BY: R.A.V.	

GEORGE GIUNTA, JR.
ATTORNEY AT LAW*
281 CHESTNUT STREET
NEEDHAM, MASSACHUSETTS 02492
*Also admitted in Maryland

TELEPHONE (781) 449-4520 FAX (781) 465-6059

October 24, 2024

Town of Needham
Zoning Board of Appeals
Needham, Massachusetts 02492

Attn: Daphne M. Collins, Zoning Specialist

Re: Elmo Fudburger, LLC
77 Charles Street, Needham, MA

Dear Ms. Collins,

Please be advised this office represents Elmo Fudburger, LLC (hereinafter the Applicant and "Fudburger") in connection with the proposed use of a portion of the property known and numbered both 77 Charles Street and 19 Wexford Street, Needham, MA (hereinafter the "Premises") as an indoor athletic or exercise facility. In connection therewith, submitted herewith, please find the following:

1. Seven copies of a Completed Application for Hearing;

2. Seven copies of site plan and interior layout;

3. Seven copies of Memorandum in Support of Application of Elmo Fudburger, LLC;

4. Authorization letter from owner / landlord; and

5. Check in the amount of $500 for the applicable filing fee.

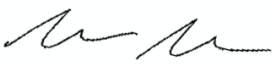
The Premises is situated between Charles Street and Wexford Street, and is occupied by an existing one-story branch commercial building. Most of the Premises is located in the Mixed Use-128 Zoning District, but a small corner of the property is in the Highland Commercial-128 Zoning District. The building is divided into several commercial rental units, used for variety of purposes, one of which is Fast Splits, a multi-sport retailer with a focus on cycling and including various cycling classes. The Fast Splits space is located entirely within the Mixed Use-128 Zoning District.

For several years, the Applicant has successfully operated a Burn Boot Camp location just a little way from the Premises on Needham Street, Newton. Now, the Applicant desires to relocate its business and use and occupy most, but not all, of the current Fast Splits space in connection therewith. Pursuant to the Zoning By-Law, a special permit pursuant to Section 3.2.6.2 is required for such use.

In addition, while there is sufficient parking on site to support the use in practice, the number of spaces required pursuant to the By-Law exceeds the number of spaces on site and the parking, which was created prior to the adoption of off-street parking requirements does not meet current standards. As a result, a waiver pursuant to Section 5.1.1.5, waiving strict adherence with the requirements of Section 5.1.2 (Required Parking) and Section 5.1.3 (Parking Plan and Design Requirements) is also required.

Kindly schedule this matter for the next hearing of the Board of Appeals. If you have any comments, questions or concerns, or if you require any further information in the meantime, please contact me so that I may be of assistance.

Sincerely,



George Giunta, Jr.

ZBA Application For Hearing

Applicants must consult with the Building Inspector prior to filing this Application. *Failure to do so will delay the scheduling of the hearing.*

Applicant Information

Applicant Name	Elmo Fudburger, LLC		Date: 10/24/24
Applicant Address	121 Cedar Lane, Westwood, MA 02090		
Phone	508-340-5312	email	cmd5989@gmail.com

Applicant is ☐Owner; ☑Tenant; ☐Purchaser; ☐Other_____

If not the owner, a letter from the owner certifying authorization to apply must be included

Representative Name	George Giunta, Jr., Esq.		
Address	281 Chestnut Street, Needham, MA 02492		
Phone	617-840-3570	email	george.giuntajr@needhamlaw.net

Representative is ☑Attorney; ☐Contractor; ☐Architect; ☐Other_____

Contact ☑Me ☑Representative in connection with this application.

Subject Property Information

Property Address	77 Charles Street		
Map/Parcel Number	Map 74 / Parcel 33	Zone of Property	Mixed Use-128 and Highland Commerical-128 Zoning Districts

Is property within 100 feet of wetlands, 200 feet of stream or in flood Plain?
☐Yes ☑No

Is property ☐Residential or ☑Commercial

If residential renovation, will renovation constitute "new construction"?
☐Yes ☐No

If commercial, does the number of parking spaces meet the By-Law requirement? ☐Yes ☑No
Do the spaces meet design requirements? ☐Yes ☑ No

Application Type (*select one*): ☑Special Permit ☐Variance ☐Comprehensive Permit ☐Amendment ☐Appeal Building Inspector Decision

ZBA Application For Hearing

Existing Conditions: Existing commercial building containing 20,104 square feet of area, divided into
several commercial rental units, with associated off-street parking area.

Statement of Relief Sought:
1. Special permit pursuant to Section 3.2.6.2 for an indoor athletic or exercise facility;
2. Special permit pursuant to Section 5.1.1.5 waving strict adherence with the off-street parking requirements of Section 5.1.2 (Required Parking) and Section 5.1.3 (Parking Plan and Design Requirements); and
3. All other relief as may be necessary and appropriate in connection with the operation of a Burn Boot Camp indoor athletic or exercise facility at the property known and numbered 77 Charles Street

Applicable Section(s) of the Zoning By-Law:
3.2.6.2, 5.1.1.5, 5.1.2, 5.1.3, 7.5.2 and any other application Section or By-Law.

If application under Zoning Section 1.4 above, list non-conformities:

	Existing Conditions	**Proposed Conditions**
Use		
# Dwelling Units		
Lot Area *(square feet)*		
Front Setback *(feet)*		
Rear Setback *(feet)*		
Left Setback *(feet)*		
Right Setback *(feet)*		
Frontage *(feet)*		
Lot Coverage *(%)*		
FAR *(Floor area divided by the lot area)*		
Numbers must match those on the certified plot plan and supporting materials		

ZBA Application For Hearing

Date Structure Constructed including additions:	Date Lot was created:

Submission Materials	Provided
Certified Signed Plot Plan of Existing and Proposed Conditions *(Required)*	
Application Fee, check made payable to the Town of Needham Check holders name, address, and phone number to appear on check and in the Memo line state: "ZBA Fee – Address of Subject Property" *(Required)*	
If applicant is tenant, letter of authorization from owner *(Required)*	
Electronic submission of the complete application with attachments *(Required)*	
Elevations of Proposed Conditions *(when necessary)*	
Floor Plans of Proposed Conditions *(when necessary)*	

Feel free to attach any additional information relative to the application. Additional information may be requested by the Board at any time during the application or hearing process.

❖❖❖❖

I hereby request a hearing before the Needham Zoning Board of Appeals. I have reviewed the Board Rules and instructions.

I certify that I have consulted with the Building Inspector_____
date of consult

Elmo Fudburger, LLC

Date: October 24, 2024 Applicant Signature George Giunta Jr
by its attorney,
George Giunta, Jr., Esq.

An application must be submitted to the Town Clerk's Office at townclerk@needhamma.gov and the ZBA Office at dcollins@needhamma.gov

TO: THE MEMBERS OF THE BOARD OF APPEALS
TOWN OF NEEDHAM, MA October 24, 2024

MEMORANDUM IN SUPPORT OF
APPLICATION OF
ELMO FUDBURGER, LLC
77 Charles Street, Needham, MA

The applicant, Elmo Fudburger, LLC (hereinafter, interchangeably, the "Applicant" and "Fudburger"), seeks a Special Permit pursuant to Section 3.2.6.2 of the Needham Zoning By-Law for an indoor athletic or exercise facility; a Special Permit pursuant to Section 5.1.1.5, waiving strict adherence with the off-street parking requirements of Section 5.1.2 (Required Parking) and Section 5.1.3 (Parking Plan and Design Requirements); and all other relief as may be necessary and appropriate in connection with the operation of a Burn Boot Camp indoor athletic or exercise facility at the property known and numbered 77 Charles Street (the "Premises").

PRESENT USE / EXISTING CONDITIONS

The Premises is part of the property shown as parcel 33 on sheet 74 of the Assessor's Map for the Town of Needham, and is located within the Mixed Use-128 Zoning District.[1] The property contains approximately 46,647 square feet of land with 253.43 feet of frontage on Charles Street and 195.87 feet of frontage on Wexford Street. The property is occupied by an existing one-story mixed-use commercial building, known and numbered both 77 Charles Street and 19 Wexford Street, containing approximately 20,104 square feet of area in total, together with associated parking. According to the available record, it appears that the building was constructed in 1964 pursuant to Building Permit no. 5660.

The building is divided into multiple rental units, currently occupied by G Medical (a/k/a Pharmaceutics), a wholesale distributor of medical supplies and pharmaceuticals, 4,838 square feet; Golftec, a golf retailer with accessory golf instruction, 3,662 square feet; and Pure Performance Training, an indoor athletic facility, providing scheduled one-to-one training and

[1] A very small part of the property, at the southeast corner, away from and not including the Premises, is situated in the Highland Commerical-128 Zoning District.

small group training of five clients or less, 5,753 square feet, and Fast Splits, a precision multisport retailer with a focus on cycling and including cycling instruction, 5,851 square feet.[2]

The Premises is a part of the aforementioned Fast Splits unit and consists of approximately 4,600 square feet of area. The remainder of the Fast Splits unit, consisting of approximately 1,251 square feet of area, will remain as landlord space, to be used for office and / or storage.

PROPOSED USE / ACTIVITY

Burn Boot Camp was started by husband and wife Devan and Morgan Kline in 2012 in North Carolina. It started in the parking lot of a gymnastics studio and quickly gained popularity. Franchising began not long after, in 2015, and today Burn Boot Camp is in 38 states, with over 400 awarded franchise locations and growing. The core of the program is a

In 2018, Christine D'Amico, the principal behind Fudburger and a lifelong athlete, opened Burn Boot Camp Newton, just up the road from the Premises, on Needham Street, as a lifestyle fitness facility designed to inspire, empower, and transform the lives of busy women and their families. In the over six years since, she and her staff have helped countless clients with the mantra "if it doesn't challenge you it doesn't change you". For a variety of reasons, she would now like to relocate her successful business to Needham.

The core of Burn Boot Camp is a series of 45 minute workouts consisting of a warm up, a dynamic workout and a finisher. The workouts are tailored to each client's fitness level, and can be modified up or down. But the Burn Boot Camp experience is about more than just the workout. It is also about building a community, primarily of women, who generally represent 90% of clientele. As a part of the community aspect, Burn Boot Camp offers free childcare, plus healthy food recipes and personal fitness consultations.

The proposed Needham location would be open Monday through Friday, 5:15 AM through 10:30 AM and then 4:00 PM through 7:30 PM, and Saturdays, 7:00 AM through 11:00 AM. The facility would be closed all other times, including Sundays. The maximum number of customers on site at any given time would be 45, which would be expected to occur during the first hour of operation, and there would be a maximum of 4 staff on site at any given time.

[2] Pure Performance Training was the subject of Major Project Site Plan Special Permit dated February 7, 2012, issued by the Planning Board, a copy of which is provided herewith for reference.

PARKING

Section 5.1.1.3 of the By-Law provides that any change or conversion of a use in a mixed-use structure, to a use which requires additional off-street parking requires compliance with Sections 5.1.2 and 5.1.3 for the entire structure, subject to certain exceptions none of which apply to the current situation.

Section 5.1.2 of the By-Law, Required Parking, sets forth various categories of uses and their associated parking demand. As set forth in that Section, an "Indoor Athletic or Exercise Facility or Personal Fitness Service Establishment" requires "one space for each 150 square feet or fraction thereof gross floor area and one space for each three employees to be employed or anticipated to be employed on the largest shift." Applying this standard to the Premises results in a parking demand for the proposed use of the Premises of 33 spaces, calculated as follows: 4,600 square feet ÷ 150 = 30.66 spaces + 2 spaces for staff (4 @ 1 space / 3 employees = 2 spaces) = 32.66 spaces = 33 spaces, rounded up. This an increase of 17 spaces over the minimum required for the current Fast Splits use, calculated as follows: Fast Splits 4,600 square feet @ 1/300 = 15.33 = 16 spaces; 33 – 16 = 17 spaces.[3]

Because the Premises is located within a mixed use building, the parking demand for the entire building is required to be considered when evaluating parking. The parking demand for the current tenants in the building (excluding the Premises, but including the remainder space to be retained by the landlord, as discussed above) is a total of spaces 71 as follows:

G Medical, 11 parking spaces[4]
Golftec: 13 paces[5]
Pure Performance Training: 42 parking spaces[6]
Remainder of Fast Splits space retained by landlord: 5 spaces[7,8]

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[3] It is not entirely clear what the correct parking demand should be for the current Fast Splits activity. Certainly, the retail component would qualify for the retail standard of one parking space per 300 square feet of space. However, Fast Splits also offers a variety of cycling classes, for which parking demand would typically be calculated in addition to the retail component. As a result, while the above calculation utilizes the base retail standard, the actual standard applicable to the Fast Splits use is likely higher.

[4] Calculated as follows: calculated as follows: 2,637 square feet warehouse @ 1 space / 850 square feet = 3.10 spaces + 2,201 square feet office space @ 1 space / 300 square feet = 7.34 spaces; 3.10 + 7.34 = 10.44 = 11 spaces, rounded up

[5] Calculated as follows: 3,662 square feet @ 1/300 = 12.21 = 13 spaces, rounded up;

[6] As determined by the Planning Board and set forth in Major Project Site Plan Special Permit Decision, Application No. 2012-01

[7] Calculated as follows: 1,251 square feet @ 1 space / 300 = 4.17 = 5 spaces rounded up. Note that this calculation follows a conservative approach, using the office parking standard. However, in practice, it is entirely possible that the landlord retained space will be used for passive storage, and therefore not generate any actual parking demand.

Adding the proposed Burn Boot Camp demand of 33 spaces to the 71 spaces calculated above, results in a grand total parking demand of 104 spaces. This is an increase of 17 over the existing parking demand of 87 spaces.[9]

There are a total of 62 parking spaces on site divided between a main lot, on the side of the building, containing 35 spaces, 10 spaces on the Charles Street side of the building, 11 spaces on the Wexford Street side of the building and 3 parallel spaces on each side of the building. As a result, there will be a shortfall of 42 spaces and a parking waiver is required. However, for the reasons set forth below, the Applicant is confident that adequate parking exists on site to support the proposed use, due to the nature of the use, the applicable characteristics of the other tenants in the building and observed, actual parking demand.

As indicated above, the Applicant anticipates that peak demand will occur in the early morning hours; likely between 5:15 AM and 7:30 AM. During that time, there is reduced use in the rest of the building. Golftec is open 9:00 AM through 8:00 PM, Monday through Thursday, 9:00 AM through 7:00 PM on Friday and 9:00 AM through 5:00 PM on Saturday and Sunday. G Medical is open 7:00 AM through 9:00 PM, seven days per week, but based on information provided by the landlord, has minimal staffing during the first hour of operation. Pure Performance Training, which is on the other side of the building, is open 6:00 AM through 8:00 PM, Monday through Friday and 8:00 AM through 12:00 PM Saturday and Sunday. Therefore, from 5:15 AM through 7:00 AM, the Applicant will be the only business in the building that will be open.

In addition, the various tenants were canvased for their typical parking demand during the hours the Applicant will be open. In response, Golftec indicated their expectation that a maximum of 4 spaces would generally be in use between the hours of 7:00 AM and 10:00 AM and a maximum of 8 spaces between 4:00 and 6:00 PM, depending on the time of year. G Medical indicated that for the past four years, they have used only one space in the front of the building and three in the side lot, between the hours of 7:00

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[8] Parking demand for the landlord retained space has been calculated based on a conservative approach, using the office parking standard. However, in practice, it is entirely possible that this space will be used for passive storage, and therefore will not generate any actual parking demand.

[9] If the Premises were included in the parking calculation for the building, based on retail use (see footnote 3 above), the total parking demand for the building would be 87 spaces. Note that this is 12 spaces more than the total, overall parking demand established by the Planning Board in 2012, likely due to the changes in tenancies over the intervening 12 years.

AM and 3:00 PM, and only one or two spaces after 4:00 PM. Pure Performance Training indicated that generally, between six and eight spaces are in regular use for staff and clients between the hours of 7:00 and 10:00 AM, with between six and ten spaces in regular use between 4:00 and 7:00 PM.

These estimates of use are consistent with the parking survey conducted by the landlord, in coordination with the Applicant. In particular, parking counts were conducted on three consecutive days, Tuesday, October 8, 2024, Wednesday, October 9, 2024 and Thursday, October 10, 2024, during the hours when the Applicant will be open. The counts from the survey are set forth at Exhibit A attached hereto. As indicated, the maximum number of vehicles on site occurred at 9:00 AM and again at 10:00 AM on Tuesday, October 8, with a total of 19 cars counted. This means that, even at the time of peak observed usage in the parking area, there were still 43 parking spaces available, 10 spaces in excess of the total calculated parking demand for the proposed use.

The existing parking area, which has been in existence since prior to the adoption of off-street parking requirements, does not comply with most of the current design requirements. In particular, the parking area does not or likely does not comply with the requirements of section 5.1.3 (a) relative to minimum lighting; (f) relative to parking space size; (h) relative to parking space layout; (i) relative to width of maneuvering aisle; (j) relative to parking setbacks; (k) relative to landscaping areas; (l) relative to trees; and (n) relative to bicycle racks. While the parking lot is pre-existing and no changes are proposed, a parking waiver from the design requirements is still required.

LAW

Massachusetts General Laws, Chapter 40A, Section 9 states as follows: “Special Permits may be issued only for uses that are in harmony with the general purpose and intent of the ordinances of the by-law, and shall be subject to general or specific provisions set forth therein; and that such permits may also impose conditions, safeguards, and limitations on time and use.”

Section 3.2.6.2 of the Town of Needham Zoning By-Laws requires the issuance of a Special Permit for the operation of an “indoor athletic or exercise facility” in the Mixed Use-128 Zoning District.

Section 7.5.2.1 of the By-Laws (Finding and Determination), as applicable to the application of Fudburger, requires that prior to granting a special permit, the Board of Appeals must make a finding and determination that the proposed use of the Premises for an indoor athletic or exercise facility:

> (a) complies with the criteria or standards of section 3.2. of the By-Law which refers to the granting of the requested special permit;
>
> (b) is consistent with 1) the general purposes of the By-Law as set forth in paragraph 1.1,[10] and 2) the more specific objectives and purposes applicable to the requested special permit which may be set forth elsewhere in the By-Laws; and
>
> (c) is designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area.

Section 5.1.1.5 authorizes and allows the Board to waive strict adherence with the requirements of Sections 5.1.2 and 5.1.3 where a particular use, structure or lot, owing to special circumstances, does not warrant the application of the parking requirements of Section 5.1.2 or the design requirements contained in Section 5.1.3. In addition, pursuant to Section 5.1.1.5 the Board is directed to consider whether the issuance of the special permit would be detrimental to the Town or to the general character and visual appearance of the surrounding neighborhood and abutting uses and is further consistent with the intent of the Zoning By-Law.

DISCUSSION / ANALYSIS

The applicant contends that the proposed use of the Premises for an indoor athletic or exercise facility complies with the requirements of Section 3.2.6.2 of the By-Law and is further in harmony with the general purpose and intent of the Zoning By-Law. The proposed use is compatible with current uses in the area, the other uses at the property, and further does not interfere with the character of the neighborhood.

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[10] Section 1.1 states that it is "The purpose of [the] By-Law [to] promote the health, safety, convenience, morals or welfare of the inhabitants of Needham; to lessen congestion in the streets; to conserve health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; to conserve the value of land and buildings; to encourage the most appropriate use of land and buildings; to encourage the most appropriate use of land throughout the Town and to preserve and increase amenities under the provisions of General Laws, Chapter 40A. The use, construction, alteration, height, area and location of buildings and structures and the use of premises in the town of Needham are regulated as [provided by the By-Laws]"

Section 3.2.6.2 requires a Special Permit for an indoor athletic or exercise facility in the Mixed Use-128 Zoning District. However, no additional requirements are imposed or otherwise set forth. Therefore, the proposed use will comply with the criteria and standards of Section 3.2.6.2 upon the issuance of the requisite Special Permit. Furthermore, the proposed use of the Premises is consistent with the requirements of Section 1.1, as the provision of athletic training and instruction will promote the convenience and welfare of the inhabitants of the Town of Needham.

The proposed use of the Premises for an athletic or exercise facility, as proposed does not warrant the application of the parking requirements of Section 5.1.2, and the issuance of the requested parking waiver will not be detrimental to the Town or to the general character and visual appearance of the surrounding neighborhood and abutting uses and will further be consistent with the intent of the Zoning By-Law.

While there is a significant shortfall of parking spaces on paper, based on the demand calculations required by the Zoning By-Law, in practice, there is ample parking available on site to support the various uses in the building, including the proposed new use. At the time of peak use, there were only 19 vehicles parked on site, two or three of which were associated with contractors performing work at the direction of the landlord. As a result, even at the time of peak parking use there were still 43 parking spaces available on site. This is because, in practice, the tenants in the building do not utilize the full amount of parking that is allocated to their uses by the Zoning By-Law. Moreover, even if actual parking demand were to increase in the future, the peak period of demand anticipated by the Applicant is between 5:15 and 7:30 AM. During that time, at least two of the other tenants are not open. And the one tenant with any material activity during that time (i.e., Pure Performance Training) is located on the opposite side of the building, accessed via Wexford Street, with ample and separate parking.

CONCLUSION

Based on the facts and discussion set forth above, Fudburger asserts that the proposed use of the Premises for an indoor athletic or exercise facility will not affect the neighborhood, surrounding area or the Town in any adverse material or significant way. Moreover, while parking waivers are necessary, the calculated parking demand for the property does not accurately reflect actual demand, and the proposed indoor athletic or exercise facility is

anticipated to experience peak use during a time when most, if not all the other tenants in the building are not even open. Furthermore, while a parking waiver from current parking design standards is also required, the parking area has been in existence since prior to the adoption of off-street parking requirements, and no change or alteration is being proposed.

The use of the Premises for an indoor athletic or exercise facility is in harmony with the general purpose and intent of the By-Law, and there are special circumstances that warrant the granting of parking waivers. Therefore, Fudburger asserts that the issuance of the requested special permits is both proper and appropriate and should be granted.

Respectfully submitted,
Elmo Fudburger, LLC,
by its attorney,

_____

George Giunta, Jr., Esq.
281 Chestnut Street
Needham, Massachusetts 02492
781-449-4520

EXHIBIT A
Parking Count Results

1. Tuesday, October 8, 2024

Time		Side (Main) Lot	Charles Street Side	Wexford Side		Total
8:00 AM		7*	3	4		14*
9:00 AM		11*	4	4		19*
10:00 AM		11**	3	5		19**
4:00 PM		9	1	5		15
5:00 PM		8	2	6		16

* Two of the observed vehicles were contractors performing work for landlord
** Three of the observed vehicles were contractors performing work for landlord

2. Wednesday, October 9, 2024

Time		Side (Main) Lot	Charles Street Side	Wexford Side		Total
8:20 AM		6*	2	2		10*
9:15 AM		3	3	2		8
10:20 AM		5	4	6		15
4:00 PM		0	0	0		0
5:00 PM		5	5	7		17

* Four of the observed vehicles were from Enterprise Rent-a-Car, located on Wexford Street, and parked without permission

3. Thursday, October 10, 2024

Time		Side (Main) Lot	Charles Street Side	Wexford Side		Total
8:15 AM		3	4	3		10
9:15 AM		4	4	4		12
10:20 AM		6	3	3		12
3:45 PM		5	1	7		13
5:45 PM		5	5	2		12

Commercial Street, 229 LLP c/o Corben Equity Partners

22 Comeau Street, Wellesley, MA 02481

Town of Needham
Zoning Board of Appeals
Needham, Massachusetts 02492

Attn: Daphne M. Collins, Zoning Specialist

Re: 77 Charles Street, Needham, MA
Application for Zoning Relief

Dear Mrs. Collins,

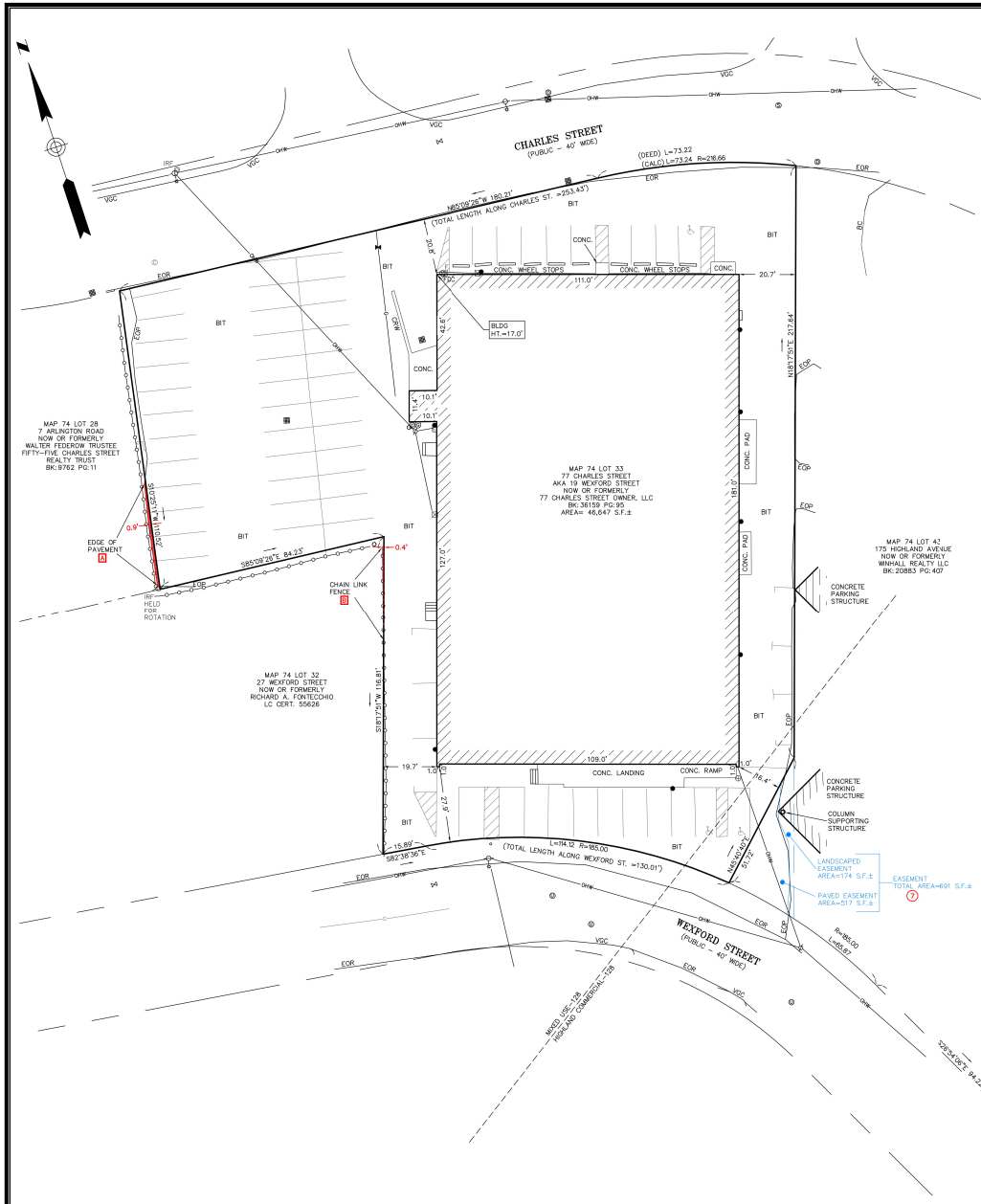
Please accept this letter as confirmation that Commercial Street 229 Limited Partnership, owner of the commercial property known and numbered 19 Wexford Road / 77 Charles Street, Needham, MA (the "Premises"), has authorized Elmo Fudburger, LLC, and its principal, Christine Sandonato, prospective tenant, acting on their own or through their attorney, George Giunta, Jr., Esquire, to make application for special permits and any and all other zoning, planning, general by-law and other relief that may be required or appropriate in connection with the use of the Premises for an indoor athletic or exercise facility with accessory retail sales and class instruction. In connection therewith, Elmo Fudburger, LLC, its principal, Christine Sandonato, and Attorney Giunta are all specifically authorized to execute, sign, deliver and receive all necessary documentation related thereto, including, without limitation, Application for Hearing.

Sincerely,

Commercial Street 229 Limited Partnership

Scott Ravelson
Comm St. 229 LP
Managing Partner

By Scott
duly authorized



SCHEDULE A – LEGAL DESCRIPTION

A certain parcel of land with the buildings thereon on the Southerly side of Charles Street, Needham, Massachusetts, shown on a Plan of Land in Needham, Massachusetts, Cheney Engineering co., Needham, Massachusetts, October 6, 1964, revised October 29, 1964, recorded Norfolk Deeds Book 4211, page 674, and bounded and described according to said plan as follows:

NORTHERLY by Charles Street 253.43 feet;

EASTERLY by land now or formerly of Philbrick Realty Trust, 217.64 feet;

SOUTHEREASTERLY by other land of said Philbrick Realty Trust, 51.72 feet;

SOUTHERLY by Wexford Street, 130.01 feet;

WESTERLY by land now or formerly of Anthony Berejk, 116.81 feet;

SOUTHERLY by land of said Anthony Berejk, 84.23 feet;

WESTERLY by land now or formerly of Orzio Nardone, Richard J. Nardone, and Oreste J. Nardone, 110.52 feet.

NOTES

1. THIS PLAN WAS PREPARED FROM AN ACTUAL ON THE GROUND FIELD SURVEY CONDUCTED BY WSP ON MAY 13, 2018;JANUARY 24, 2020 AND LAST VISITED ON NOVEMBER 18, 2022.

2. THE HORIZONTAL DATUM SHOWN HEREON REFERENCES THE MASSACHUSETTS STATE PLANE COORDINATE SYSTEM NAD 83 AND WAS ESTABLISHED USING RTK GPS SURVEY TECHNIQUES REFERENCING THE MACORS GPS NETWORK.

3. THE LOCUS PROPERTY IS LOCATED IN THE MIXED USE –128 WITHIN THE WIRELESS COMMUNICATIONS FACILITIES TOWERS OVERLAY, ADULT USE OVERLAY AND MIXED USE OVERLAY DISTRICTS. ZONING DISTRICTS PER MAP ENTITLED "TOWN OF NEEDHAM, MASSACHUSETTS ZONING MAP" LAST REVISED ON APRIL 1, 2018 AND AS DESCRIBED IN A ZONING REPORT PREPARED BY ZONING INFO, INC. DATED JANUARY 30, 2020.

4. THE SUBJECT AREA IS LOCATED IN ZONE X (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN) AS SHOWN ON THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD INSURANCE REATE MAP PANEL 36 OF 430, COMMUNITY PANEL NUMBER 250215–036–E, EFFECTIVE DATE JULY 17, 2012.

5. AT THE TIME OF THE SURVEY THERE WAS NO OBSERVED EVIDENCE OF ANY RECENT EARTH MOVING WORK OR CONSTRUCTION.

6. THE LAND DEPICTED ON THE SURVEY IS THE SAME AS THE LAND DESCRIBED IN FIDELITY NATIONAL INSURANCE COMPANY COMMITMENT NUMBER 2490–S DATED NOVEMBER 11, 2022.

7. THE SUBJECT PROPERTY SHOWN HEREON HAS ACCESS TO CHARLES AND WEXFORD STREET, BOTH PUBLIC WAYS.

PLAN REFERENCES

NORFOLK COUNTY REGISTRY OF DEEDS

1. PLAN BOOK 4211 PAGE 674. (LOCUS PARCEL)

2. PLAN NUMBER 386 OF 1964. (CHARLES STREET LAYOUT)

3. PLAN NUMBER 414 OF 1956. (WEXFORD STREET LAYOUT)

4. PLAN NUMBER 1158 OF 1987. (175 HIGHLAND AVENUE)

5. DEED BOOK 29665 PAGE 318. (EASEMENT PLAN)

UNRECORDED PLANS

6. "SITE PLAN OF LAND IN NEEDHAM, MA" PREPARED BY EVERETT M. BROOKS CO. DATED JANUARY 4, 2012.

7. "ALTA/NSPS LAND TITLE SURVEY" PREPARED BY WSP DATED JUNE 11, 2018.

UTILITY STATEMENTS

THE LOCATION OF THE UTILITIES AS SHOWN HEREON HAVE BEEN COMPILED FROM VISIBLE STRUCTURES ONLY, NO SUB–SURFACE UTILITY INVESTIGATION OR RESEARCH WAS DONE AT ANY LEVEL FOR THIS PLAN. THE ACTUAL LOCATION OF ALL UTILITIES AND UNDERGROUND STRUCTURES SHALL BE CONSIDERED APPROXIMATE AND SHALL BE VERIFIED BY THE OWNER PRIOR TO ANY CONSTRUCTION. THE SURVEYOR MAKES NO GUARANTEES THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICES OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED.

SCHEDULE B II – EXCEPTIONS

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time is the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I – Requirements are met.(NOT SURVEY RELATED)
2. Rights or claims of parties in possession.(NOT SURVEY RELATED)
3. Any lien or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposec by law and not shown by the Public Records.(NOT SURVEY RELATED)
4. Liens for taxes and assessments which become due and payable subsequent to the Date of Policy. (NOT SURVEY RELATED)
5. (RESERVED)
6. Exact acreage or square footage of the Land is not insured.(NOT SURVEY RELATED)
7. Easement Agreement for access from Winhall Realty LLC to Richard S. Epstein and Kenneth P. Epstein, Trustees of E&S Realty Trust dated January 31, 2012 recorded with said Registry of Deeds in Book 29665, Page 315. (PLOTTED)
8. Decision of the Planning Board of the Town of Needham dated February 7, 2012 and recorded at Bcok 29710, Page 370. (NOT PLOTTABLE)

LIST OF ENCROACHMENTS

A PAVEMENT ALONG THE WESTERLY PROPERTY LINE.

B CHAIN LINK FENCE ALONG THE WESTERLY PROPERTY LINE.

ZONING TABLE PER ZONING REPORT – SEE NOTE #3

SITE REQUIREMENTS BASED ON ZONING REPORT.

MINIMUM LOT AREA REQUIRED =	2 ACRES
MINIMUM LOT AREA EXISTING =	1.07 ACRES
MINIMUM LOT FRONTAGE REQUIRED =	100 FT.
MINIMUN LOT FRONTAGE EXISTING =	130.33 FT. ALONG WEXFORD STREET
MAXIMUM LOT COVERAGE ALLOWED =	30,320.6 S.F.
MAXIMUM LOT COVERAGE EXISTING =	20,138.2 S.F.
MAXIMUM FLOOR AREA RATIO ALLOWED =	3.00
MAXIMUM FLOOR AREA RATIO EXISTING =	0.43
MINIMUM OPEN SPACE REQUIREC =	9,329 S.F.
MINIMUM OPEN SPACE EXISTING =	0 S.F.
MAXIMUM BUILDING LENGTH ALLOWED=	200 FT.
MAXIMUM BUILDING LENGTH EXISTING =	111 FT.
MAXIMUM HEIGHT ALLOWED =	54 FT.
MAXIMUM HEIGHT EXISTING =	17 FT.
FRONT SETBACK REQUIRED =	5 FT. ALONG CHARLES AND WEXFORD STREET
FRONT SETBACK EXISTING =	20.8 FT. ALONG CHARLES STREET
FRONT SETBACK EXISTING =	27.9 FT. ALONG WEXFORD STREET
SIDE SETBACK REQUIRED =	10 FT.
SIDE SETBACK EXISTING =	16.4 FT.
REAR SETBACK ALLOWED =	10 FEET
REAR SETBACK EXISTING =	N/A

PARKING SPACES

PARKING SPACES REQUIRED = 62

EXISTING PARKING SPACES
59 REGULAR PARKING SPACES
3 HANDICAP PARKING SPACES

TOTAL PARKING SPACES = 62

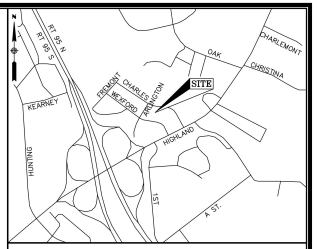
CERTIFICATION:

TO: COMMERCIAL STREET 229 L?

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2021 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 2, 3, 4, 6(a), 6(b), 7(a), 7(b)(1), 7(c), 8, 9, 11, 13, 14, 16 AND 17 OF TABLE THEREOF. THE FIELD WORK WAS COMPLETED ON MAY 13, 2018;JANUARY 24, 2020 AND LAST REVISITED ON NOVEMBER 18, 2022.

COMMONWEALTH OF MASSACHUSETTS
DARREN J. HARDY
NO 48385
REGISTERED PROFESSIONAL LAND SURVEYOR

DARREN J. HARDY, P.L.S. NOVEMBER 18, 2022
REG. NO. 48385
WSP USA, Inc.



LOCUS MAP
(N.T.S.)

LEGEND

- IRF IRON ROD FOUND
- SBH□ STONE BOUND WITH DRILL HOLE
- SBL□ STONE BOUND LEAD PLUG
- CATCH BASIN
- DRAIN MANHOLE
- ROOF DRAIN
- NO LABEL MANHOLE
- SEWER MANHOLE
- ELECTRIC BOX
- ELECTRIC METER
- GAS METER
- GAS VALVE
- CABLE MANHOLE
- WATER GATE
- UTILITY POLE
- UTILITY POLE WITH LIGHT
- UTILITY POLE WITH LIGHT AND TRANSFORMER
- STUMP
- POST
- BOLLARD
- HANDICAP PARKING
- FDC FIRE DEPARTMENT CONNECTION
- F FIRE ALARM
- EOP EDGE OF PAVEMENT
- EOR EDGE OF ROAD
- VGC VERTICAL GRANITE CURB
- CONCRETE RETAINING WALL
- ABUTTERS LOT LINE
- PROPERTY LINE
- EASEMENT
- RIGHT OF WAY LINE
- CHAIN LINK FENCE
- GAS LINE
- UNDERGROUND CABLE
- OHW OVERHEAD WIRES
- ENCROACHMENT AREA

GRAPHIC SCALE

20 0 10 20 40 80

(IN FEET)
1 inch = 20 ft.

REVISION	
DATE	DESCRIPTION

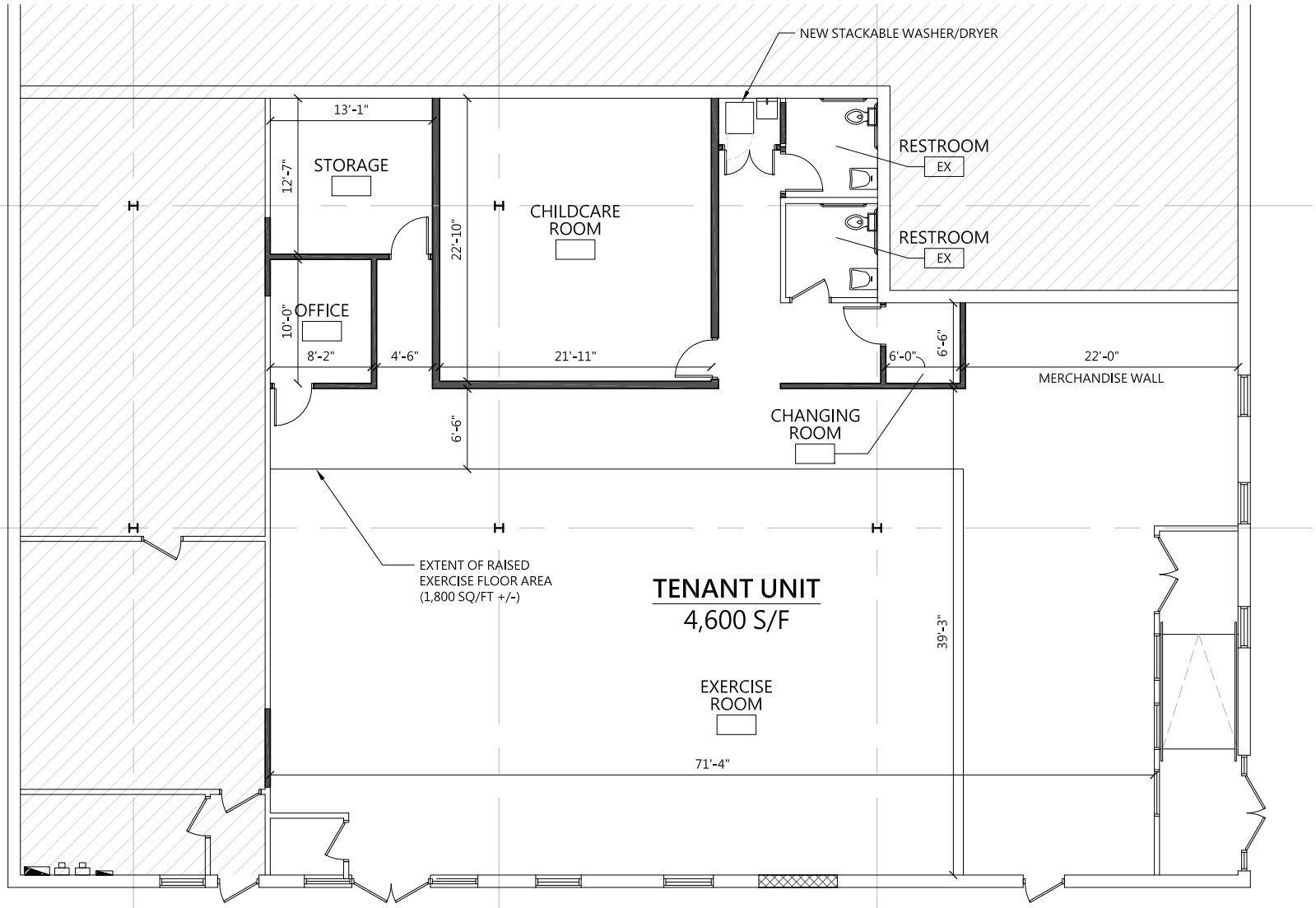
ALTA/NSPS LAND TITLE SURVEY

77 CHARLES STREET
NEEDHAM, MASSACHUSETTS
PREPARED FOR
COMMERCIAL STREET 229 LP

WSP USA Inc.
10 Al Paul Lane, Suite 103
Merrimack, NH 03054
603.324.0894

Drawn By	MS	Date	Job No.
Surveyed By	CP, JT, JF	NOVEMBER 22, 2022	30902289
Checked By	DJH	Scale	Sheet No.
Book No.	N–288	1" = 20'	1 OF 1

30902289.001–1.dwg



FLOOR PLAN - PROPOSED

SCALE: 1/8" = 1'-0"

GEORGE GIUNTA, JR.
ATTORNEY AT LAW*
281 CHESTNUT STREET
NEEDHAM, MASSACHUSETTS 02492
*Also admitted in Maryland

TELEPHONE (781) 449-4520 FAX (781) 465-6059

October 24, 2024

Town of Needham
Zoning Board of Appeals
Needham, Massachusetts 02492

Attn: Daphne M. Collins, Zoning Specialist

Re: Monsoon Indian Kitchen, Inc.
324 Chestnut Street, Needham, MA

Dear Ms. Collins,

Please be advised this office represents Monsoon Indian Kitchen, Inc. (hereinafter the Applicant and "Monsoon") in connection with the proposed operation of a take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere at the property known and numbered 324 Chestnut Street, Needham, MA (hereinafter the "Premises"). In connection therewith, submitted herewith, please find the following:

1. Seven copies of a Completed Application for Hearing;

2. Seven copies of site plan and interior layout plan;

3. Seven copies of Memorandum in Support of Application of Monsoon Indian Kitchen, Inc.;

4. Seven copies of letter of Paramjit Singh;

5. Seven copies of authorization letter; and

6. Check in the amount of $500 for the applicable filing fee.

Monsoon is an established restauranteur, having operated an Indian restaurant in Central Square, Cambridge since 1974. One of the members, who lives in Needham, would like to bring the same level of service and cuisine to his home community, through a take out restaurant at the Premises, in the former Home Kitchen location.

While the proposed use falls within the same use category and generates the same parking demand as the prior use, because the prior use was authorized by special permit, and because the prior use has ceased operation, new special permits are required. In particular, a special permit for the use itself, as well as more than one non-residential use on a lot is required pursuant to Section 3.2.2. In addition, a special permit pursuant to Section 5.1.1.5 waiving strict adherence with the off-street parking requirements of Sections 5.1.2 and 5.1.3 is also required.

Kindly schedule this matter for the next hearing of the Board of Appeals. If you have any comments, questions or concerns, or if you require any further information in the meantime, please contact me so that I may be of assistance.

Sincerely,

George Giunta, Jr.

ZBA Application For Hearing

Applicants must consult with the Building Inspector prior to filing this Application. *Failure to do so will delay the scheduling of the hearing.*

Applicant Information

Applicant Name	Monsoon Indian Kitchen, Inc.		Date: 10/24/24
Applicant Address	C/O Paramjit Singh 77 Putnam Street, Needham, MA 02494		
Phone	617-680-7128	email	paramsaini@hotmail.com

Applicant is ☐Owner; ☑Tenant; ☐Purchaser; ☐Other_____

If not the owner, a letter from the owner certifying authorization to apply must be included

Representative Name	George Giunta, Jr., Esq.		
Address	281 Chestnut Street, Needham, MA 02492		
Phone	617-840-3570	email	george.giuntajr@needhamlaw.net

Representative is ☑Attorney; ☐Contractor; ☐Architect; ☐Other_____

Contact ☑Me ☑Representative in connection with this application.

Subject Property Information

Property Address	324 Chestnut Street, Needham, MA 02492		
Map/Parcel Number	Map 46 Parcel 19	Zone of Property	CSB - Chestnut Street Business

Is property within 100 feet of wetlands, 200 feet of stream or in flood Plain?
☐Yes ☑No

Is property ☐Residential or ☑Commercial

If residential renovation, will renovation constitute "new construction"?
☐Yes ☐No N/A

If commercial, does the number of parking spaces meet the By-Law requirement? ☐Yes ☑No
Do the spaces meet design requirements? ☐Yes ☑ No

Application Type (*select one*): ☑Special Permit ☐Variance ☐Comprehensive Permit ☐Amendment ☐Appeal Building Inspector Decision

ZBA Application For Hearing

Existing Conditions:
Approximately 1,179 square foot take out establishment primarily engaged in the dispensing of prepared foods, located in mixed-use building consisting of approximately 10,916 square feet of
commercial space. Existing use was authorized pursuant to Board of Appeals Decision issued to Home Kitchen, Inc., dated July 11, 2019.

Statement of Relief Sought:
1. Special permit pursuant to Section 3.2.2 for a take out establishment engaged in the dispensing of prepared foods;
2. Special permit pursuant to Section 3.2.2 for more than one non-residential use on the lot;
3. Special permit pursuant to Section 5.1.1.5 waiving strict adherence to the requirements of Section 5.1.2 (Required Parking) and Section 5.1.3 (Parking Plan and Design Requirements); and

4. All other relief as may be necessary for the operation of a take out establishment primarily engaged in the dispensing of prepared foods in the commercial space known and numbered 324 Chestnut Street.

Applicable Section(s) of the Zoning By-Law:
3.2.2, 5.1.1.5, 5.1.2, 5.1.3, 7..5.2 and any other applicable section or By-Law.

If application under Zoning Section 1.4 above, list non-conformities:

	Existing Conditions	**Proposed Conditions**
Use		
# Dwelling Units		
Lot Area *(square feet)*		
Front Setback *(feet)*		
Rear Setback *(feet)*		
Left Setback *(feet)*		
Right Setback *(feet)*		
Frontage *(feet)*		
Lot Coverage *(%)*		
FAR *(Floor area divided by the lot area)*		
Numbers must match those on the certified plot plan and supporting materials		

ZBA Application For Hearing

Date Structure Constructed including additions:	Date Lot was created:

Submission Materials	Provided
Certified Signed Plot Plan of Existing and Proposed Conditions *(Required)*	
Application Fee, check made payable to the Town of Needham Check holders name, address, and phone number to appear on check and in the Memo line state: "ZBA Fee – Address of Subject Property" *(Required)*	
If applicant is tenant, letter of authorization from owner *(Required)*	
Electronic submission of the complete application with attachments *(Required)*	
Elevations of Proposed Conditions *(when necessary)*	
Floor Plans of Proposed Conditions *(when necessary)*	

Feel free to attach any additional information relative to the application. Additional information may be requested by the Board at any time during the application or hearing process.

❖❖❖❖

I hereby request a hearing before the Needham Zoning Board of Appeals. I have reviewed the Board Rules and instructions.

I certify that I have consulted with the Building Inspector_____
date of consult

Monsoon Indian Kitchen, Inc.

Date: 10/24/24 Applicant Signature George Giunta Jr
by its attorney, George Giunta, Jr., Esq.

An application must be submitted to the Town Clerk's Office at townclerk@needhamma.gov and the ZBA Office at dcollins@needhamma.gov

TO: THE MEMBERS OF THE BOARD OF APPEALS
TOWN OF NEEDHAM, MA October 24, 2024

MEMORANDUM IN SUPPORT OF
APPLICATION OF
MONSOON INDIAN KITCHEN, INC
324 Chestnut Street, Needham, MA

The applicant, Monsoon Indian Kitchen, Inc. (hereinafter, interchangeably, the "Applicant" and "Monsoon"), seeks a Special Permit pursuant to Section 3.2.2 of the Needham Zoning By-Law for a take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere; a Special Permit pursuant to Section 3.2.2 for more than one non-residential use on the lot; a Special Permit pursuant to Section 5.1.1.5, waiving strict adherence with the off-street parking requirements of Section 5.1.2 (Required Parking) and Section 5.1.3 (Parking Plan and Design Requirements); and all other relief as may be necessary and appropriate in connection with the operation of a take out Indian restaurant at the property known and numbered 324 Chestnut Street (the "Premises").

PRESENT USE / EXISTING CONDITIONS

The Premises is part of the property shown as parcel 19 on sheet 46 of the Assessor's Map for the Town of Needham, and is located within the Chestnut Street Business Zoning District. The property contains approximately 27,932 square feet of land with 139.66 feet of frontage on Chestnut Street and is occupied by an existing mixed-use commercial building, known and numbered 320-332 Chestnut Street, and containing approximately 10,916 square feet of area divided among seven rental units. The Premises, which is one such unit, consists of approximately 1,179 square feet of space. It was most recently used and occupied by Home Kitchen as a take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere. Prior thereto, it was used and occupied by Prelude Gifts for retail purposes. The Home Kitchen take

out use was permitted pursuant to Decision of the Board of Appeals dated July 11, 2019, but the restaurant closed sometime in the past year.[1]

PROPOSED USE / ACTIVITY

The family behind Monsoon Indian Kitchen, Inc. has been in the restaurant business since 1974, when they opened their first location in Central Square, Cambridge. That restaurant is still open today; a testament to the quality and consistency of the food and service. Now, Paramjit Singh, a member of the family and a Needham resident wants to bring the same level of dedication and commitment to his home community, by offering a takeout experience that emphasizes health-conscious, authentic Indian cuisine. Mr. Singh brings over 20 years of experience to the kitchen and combines traditional cooking methods with novel ingredients to create innovative meals.

The take-out restaurant will feature delicious family recipes such as chicken Tikka Masala, Shrimp Curry, Vegetable Curry, and freshly baked Naan bread, among other specialties. The menu will cater to the diverse tastes of the community, with options for vegetarians and those seeking healthier alternatives. Families and individuals will be able to pick up freshly prepared meals to enjoy in the comfort of their homes, sharing nourishing, delicious food with loved ones.

The hours of operation are anticipated to be 10:00 AM to 10:00 PM, seven days each week. In the beginning, a maximum of five employees are anticipated to be on site at any given time: an owner representative, a manager, a chef and two support staff. However, the chef and support staff will be living within walking distance, and therefore will not be parking on site. Moreover, over time, as the restaurant is established, the owner representative is expected to be present on only a limited basis. Therefore, once the restaurant is up and running smoothly, only the manager is anticipated to park on site.

In general, Monsoon is proposing to maintain the same layout as Home Kitchen and to re-use the existing equipment. However, Monsoon intends to add a small grab and go beverage refrigerator in the front area, as well as a bar / counter and 4-6 stool for customers who are waiting for food. To be clear, this is not an area intended or designated for eating, but rather, a convenience for customers waiting for their order.

---

[1] A copy of the Decision is provided herewith.

PARKING

Section 5.1.1.3 of the By-Law provides that any change or conversion of a use in a mixed-use structure, to a use which requires additional off-street parking requires compliance with Sections 5.1.2 and 5.1.3 for the entire structure. In addition, whereas a special permit parking waiver was granted in connection with the prior Home Kitchen use, pursuant to the provisions of Section 5.1.1.3, the base parking demand would be based on the prior use, and a new waiver is required.

Section 5.1.2 of the By-Law, Required Parking, sets forth various categories of uses and their associated parking demand. The proposed take out restaurant use falls within the "restaurant" category which requires one space for every 3 seats, plus ten spaces per take-out service station. Whereas the proposed stools are not for service or eating, same should not be counted in the parking calculation. Under such approach, the parking demand associated with the proposed take out restaurant would be 10 parking spaces. However, if the stools were to be included, and assuming a maximum of 6 stools, the parking demand would increase to 12, based on 10 spaces for the take out station and 1 space for every 3 seats.

Moreover, because the Premises is located within a mixed use building, the parking demand for the entire building is required to be considered in connection with the request for a parking waiver. The current uses and associated parking demand for the plaza (excluding the Premises) are as follows:

Dragon Chef (1,230 square feet take out restaurant @ 10 spaces / take out)	10 spaces
Sweet Tomatoes (21 seats @ 1 space / 3 seats + 10 spaces for take out)	17 spaces
Elizabeth Grady salon (1,180 square feet @ 1 space / 300 square feet = 3.93 spaces)	4 spaces
Dellaria Salon (1,072 square feet @ 1 space / 300 square fee = 3.57 spaces)	4 spaces

Organic Nails (1,095 square feet @ 1 space / 300 square feet = 3.65 spaces)	4 spaces
Chestnut Street Animal Hospital (2,600 square feet @ 1 space / 200 square feet = 13 spaces)	13 spaces

Therefore, the total parking demand for all other current uses at the property is 52 spaces. Adding the take out parking demand for the proposed Monsoon Kitchen use would increase the total demand to 62 spaces. And if parking is included for the maximum of 6 waiting seats, the total demand would increase to 64 spaces.

There are a total of 42 parking spaces located on the Property. Whereas this is less than the total parking demand, a parking waiver is required. Furthermore, the waiver required is either 20 or 22 spaces, depending on whether parking demand is included for the proposed waiting stools.

The existing parking area, which has been in existence since prior to the adoption of off-street parking requirements, complies with many, but not all of the current design requirements. In particular, the parking area does not comply with the requirements of section 5.1.3 (a) relative to minimum lighting; (j) relative to parking setbacks; (k) relative to landscaping areas; and (l) relative to trees. While the parking lot is pre-existing and no changes are proposed, a parking waiver from the design requirements is still required.

LAW

Massachusetts General Laws, Chapter 40A, Section 9 states as follows: “Special Permits may be issued only for uses that are in harmony with the general purpose and intent of the ordinances of the by-law, and shall be subject to general or specific provisions set forth therein; and that such permits may also impose conditions, safeguards, and limitations on time and use.”

Section 3.2.2 of the Town of Needham Zoning By-Laws (Schedule of Use Regulations) requires the issuance of a Special Permit for the operation of a “take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere” as well as “more than one non-residential building or use on a lot” in the Chestnut Street Business Zoning District.

Section 7.5.2.1 of the By-Laws (Finding and Determination), as applicable to the application of Monsoon, requires that prior to granting a special permit, the Board of Appeals

must make a finding and determination that the proposed use of the Premises for a take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere:

> (a) complies with the criteria or standards of section 3.2. of the By-Law which refers to the granting of the requested special permit;
>
> (b) is consistent with 1) the general purposes of the By-Law as set forth in paragraph 1.1,[2] and 2) the more specific objectives and purposes applicable to the requested special permit which may be set forth elsewhere in the By-Laws; and
>
> (c) is designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area.

Section 5.1.1.5 authorizes and allows the Board to waive strict adherence with the requirements of Sections 5.1.2 and 5.1.3 where a particular use, structure or lot, owing to special circumstances, does not warrant the application of the parking requirements of Section 5.1.2 or the design requirements contained in Section 5.1.3. In addition, pursuant to Section 5.1.1.5 the Board is directed to consider whether the issuance of the special permit would be detrimental to the Town or to the general character and visual appearance of the surrounding neighborhood and abutting uses and is further consistent with the intent of the Zoning By-Law.

DISCUSSION / ANALYSIS

The applicant contends that the proposed use of the Premises for a take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere as one of multiple non-residential uses at the property complies with the requirements of Section 3.2.2 of the By-Law and is further in harmony with the general purpose and intent of the Zoning By-Law. The proposed use is compatible with current uses in the area, the other uses within the property, and further does not interfere with the character of the neighborhood.

---

[2] Section 1.1 states that it is "The purpose of [the] By-Law [to] promote the health, safety, convenience, morals or welfare of the inhabitants of Needham; to lessen congestion in the streets; to conserve health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; to conserve the value of land and buildings; to encourage the most appropriate use of land and buildings; to encourage the most appropriate use of land throughout the Town and to preserve and increase amenities under the provisions of General Laws, Chapter 40A. The use, construction, alteration, height, area and location of buildings and structures and the use of premises in the town of Needham are regulated as [provided by the By-Laws]"

Section 3.2.2 requires a Special Permit for a take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere and for multiple non-residential uses on a lot within the Chestnut Business District. However, no additional requirements are imposed for either activity. Therefore, the proposed use, as one of several non-residential uses at the property, will comply with the criteria and standards of Section 3.2.2 upon the issuance of the requisite Special Permit. Furthermore, the proposed use of the Premises is consistent with the requirements of Section 1.1, as the provision of quality prepared food will promote the convenience and welfare of the inhabitants of the Town of Needham.

The proposed use of the Premises for a take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere does not warrant the application of the parking requirements of Section 5.1.2, and the issuance of the requested parking waiver will not be detrimental to the Town or to the general character and visual appearance of the surrounding neighborhood and abutting uses and will further be consistent with the intent of the Zoning By-Law.

A significant portion of the calculated parking demand for the plaza is the take out demand for both the proposed use and for the existing Sweet Tomatoes restaurant. Together, these two elements combine for a total of 20 out of the 62 to 64 required spaces. However, as the Board has noted in previous cases, the requirement of the By-Law for 10 parking spaces for take out is an arbitrary number and does not necessarily accurately reflect reality. Furthermore, if parking demand is included for the waiting stools (resulting in a total parking demand of 64), same would result in a double count, as the customers sitting on the stools would also be included in the take out parking demand. Finally, in addition to the 42 spaces available on site, there are approximately 12 on street parking spaces within easy walking distance of the Premises.

For all practical purposes, the parking demand for the plaza will remain the same with the proposed Monsoon take out restaurant as it was previously. In 2019, the Board determined that there was sufficient parking and sufficient basis for the issuance of a parking waiver. Whereas the proposed use is substantially similar to the prior use, and whereas no material changes have been, or are being proposed for the property, conditions are substantially and materially the same and the re-issuance of the parking waiver is appropriate

CONCLUSION

Based on the facts and discussion set forth above, Monsoon asserts that the proposed use of the Premises for a take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere will not affect the neighborhood, surrounding area or the Town in any adverse material or significant way. From 2019 though 2023 the Premises was used and operated for a substantially similar use without significant issue or incident. While the operational aspects and hours are different, they are not so different as to likely cause any different impact.

Moreover, while parking waivers are necessary, the calculated parking demand does not accurately reflect actual demand, and a substantially similar use, with the same parking demand, operated without incident for several years. Furthermore, the parking area has been in existence since prior to the adoption of off street parking requirements, and there are approximately twelve on street spaces available within walking distance of the Premises, providing additional parking.

The use of the Premises for a take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere is in harmony with the general purpose and intent of the By-Law, and there are special circumstances that warrant the granting of parking waivers. Therefore, Monsoon asserts that the issuance of the requested special permits is both proper and appropriate and should be granted.

Respectfully submitted,
Monsoon Indian Kitchen, Inc.
by its attorney,

_____

George Giunta, Jr., Esq.
281 Chestnut Street
Needham, Massachusetts 02492
781-449-4520

Paramjit Singh
77 Putnam Street
Needham, MA 02494

Oct 10, 2024

Zoning Board of Directors
500 Dedham Ave, Needham, MA-02492

Dear Members of the Zoning Board,

My name is Paramjit Singh, a proud resident of Needham, and I am writing to formally request a special permit to open a new family-run Indian takeout restaurant in our town. Our restaurant, Monsoon Indian Kitchen, will serve the local community with healthy, flavorful Indian food, rooted in family traditions passed down for generations.

My family has been in the restaurant business since 1974, when we opened our first location in Cambridge's Central Square. This restaurant remains in operation to this day, a testament to the quality and consistency of our food and service. Now, as a Needham resident, I am eager to bring that same level of dedication and commitment to the community where I live, by offering a takeout experience that emphasizes health-conscious, authentic Indian cuisine.

Monsoon Indian Kitchen will feature delicious family recipes such as chicken Tikka Masala, Shrimp Curry, Vegetable Curry, and freshly baked Naan bread, among other specialties. Our menu will cater to the diverse tastes of our community, with options for vegetarians and those seeking healthier alternatives. Families and individuals will be able to pick up freshly prepared meals to enjoy in the comfort of their homes, sharing nourishing, delicious food with loved ones.

Please know that this venture is not about making a quick profit; it is about contributing to the vibrancy and well-being of our town. My goal is

to create a reliable, high-quality takeout service for Needham's residents to enjoy, helping families come together over flavorful meals that reflect our heritage. I am committed to the success of this restaurant because it serves the community I love, and I believe it will be a wonderful addition to Needham.

I kindly ask for your support in granting the special permit needed to open this restaurant. I am happy to provide any additional information or answer any questions that you may have. Thank you for considering my request, and I look forward to the opportunity to serve our community through Monsoon Indian Kitchen.

Sincerely,
Paramjit Singh

PETRINI
CORPORATION
Est. 1945

October 11, 2024

Town of Needham
Zoning Board of Appeals
Needham, Massachusetts 02492

Attn: Daphne M. Collins, Zoning Specialist

Re: 324 Chestnut Street, Needham, MA
Application for Zoning Relief

Dear Mrs. Collins,

Please accept this letter as confirmation that Petrini Corporation, owner of the commercial space known and numbered 324 Chestnut Street, Needham, MA (the "Premises"), being part of the property known and numbered 320-334 Chestnut Street, has authorized Monsoon Indian Kitchen, Inc., tenant, acting on its own or through its attorney, George Giunta, Jr., Esquire, to make application for special permits and any and all other zoning, planning, general by-law and other relief that may be required or appropriate in connection with the use of the Premises for a take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere, or other related use. In connection therewith, Monsoon Indian Kitchen, Inc. and Attorney Giunta are specifically authorized to execute, sign, deliver and receive all necessary documentation related thereto, including, without limitation, Application for Hearing.

Sincerely,

Petrini Corporation

Robert J Hentschel

By Robert J. Hentschel
duly authorized

187 ROSEMARY STREET. NEEDHAM. MASSACHUSETTS 02494
781.444.1963
PETRINICORP.COM

ZONING LEGEND

ZONING DISTRICT: CHESTNUT STREET BUSINESS

	REQUIRED	PROVIDED	COMPLIANCE
MIN. AREA	10,000 S.F.	27,932 S.F.±	YES
MIN. FRONTAGE	80'	139.66'±	YES
MIN. YARD –FRONT	20'	9.7'±	EXISTING NON–CONFORMING
–SIDE	0/50' (NOTE 1)	3.5'±/67.5'±	YES
–REAR	50' (NOTE 1)	9.9'±	EXISTING NON–CONFORMING
MAX. STORIES	3	1	YES
MAX. HEIGHT	40'	<40'	YES
MAX FAR	0.7	0.40 ±	YES
PARKING TOTAL	(NOTE 2)	42 (NOTE 2)	WAIVER (NOTE 2)

ZONING BYLAW 5.1.3 PARKING PLAN AND DESIGN REQUIREMENTS

	REQUIRED	PROVIDED	COMPLIANCE
A) PARKING ILLUMINATION	1 FOOT CANDLE	EXISTING	EXISTING CONDITION (NO CHANGE)
B) LOADING REQUIREMENTS	ADEQUATE	EXISTING	EXISTING CONDITION (NO CHANGE)
C) HANDICAPPED PARKING	2	2	YES
D) DRIVEWAY OPENINGS	SEC 4.4.5	EXISTING	EXISTING CONDITION (NO CHANGE)
E) COMPACT CARS	50% MAX (8'X16')	9.3%	YES
F) PARKING SPACE SIZE	9'x 18.5'	EXISTING	YES
G) BUMPER OVERHANG	1' OVERHANG	NA	NA
H) PARKING SPACE LAYOUT	SEC. 5.1.3.H	COMPLIES	YES
I) AISLE WIDTH	24' (90 DEG. STALL)	27.3'±	YES
MIN. DRVWY. WIDTH	(SEC 4.4.5) 18'	>18'	YES
J) PARKING SETBACK			
–FRONT	20'	0.2'±	EXISTING NON–CONFORMING
–SIDE	4'/25' (NOTE 3)	4.5'	(NOTE 3)
–REAR	25'	9.9'±	EXISTING NON–CONFORMING
–BUILDING	5'	2.6'±	EXISTING NON–CONFORMING
K) LANDSCAPED AREAS	10%	EXISTING	EXISTING CONDITION (NO CHANGE)
INTERIOR LANDSCAPING	2.5%	EXISTING	EXISTING CONDITION (NO CHANGE)
L) TREES	1 PER 10 SPACES	EXISTING	EXISTING CONDITION (NO CHANGE)
M) LOCATION	WITHIN LOT	WITHIN LOT	YES
N) BICYCLE RACKS	1/20 SPACES	2	EXISTING

NOTES:

1) 50' SETBACK REQUIRED FOR PORTIONS OF LOT ADJOINING RESIDENTIAL DISTRICT. 0' REQUIRED IF NOT ADJOINING RESIDENTIAL DISTRICT.

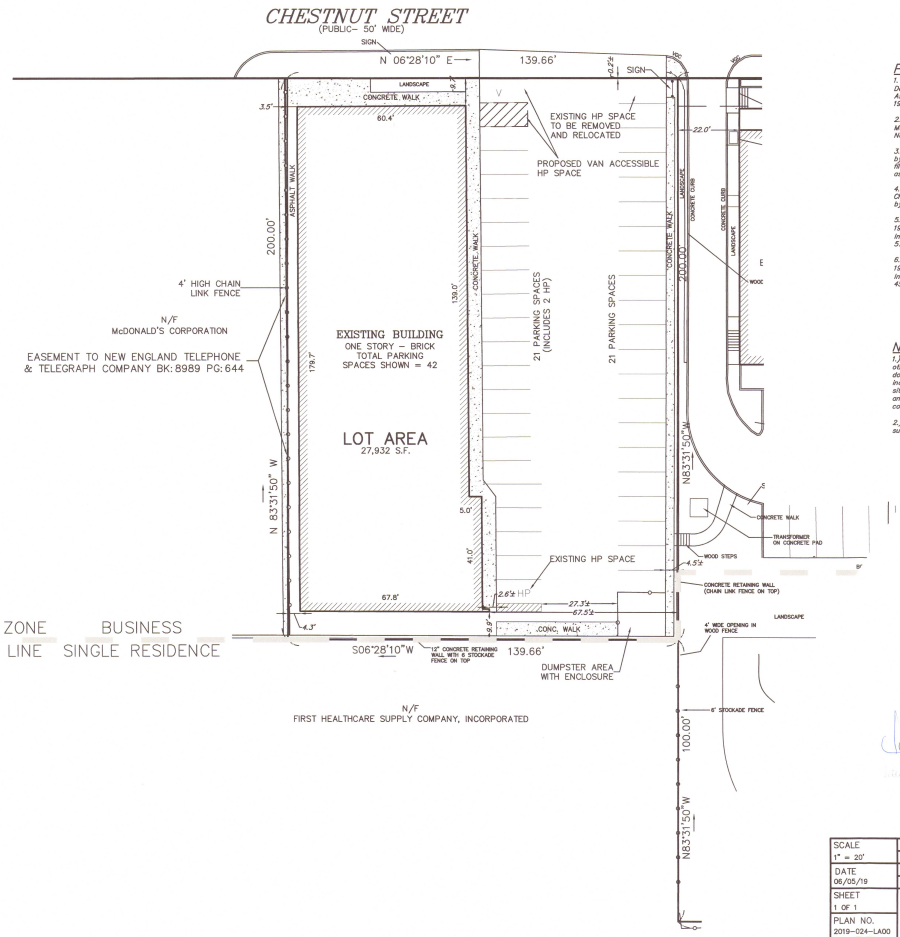
2) SWEET TOMATOES 2,500 S.F. & 21 SEATS @ 1 SPACE / 3 SEATS = 7 SPACES
& TAKE OUT STATION = 10 SPACES
TOTAL SWEET TOMATOES REQUIRED = 17 SPACES
HOME KITCHEN 1,179 S.F. (TAKE OUT RESTAURANT) = 10 SPACES)
ELIZABETH GRADY 1,180 S.F. @ 1 SPACE / 300 S.F. = 4 SPACES
DELLARIA SALONS 1,072 S.F. @ 1 SPACE / 300 S.F. = 4 SPACES
NAIL SALON 1,095 S.F. @ 1 SPACE / 300 S.F. = 4 SPACES
DRAGON CHEF 1,230 S.F. (TAKE OUT RESTAURANT = 10 SPACES)
CHESTNUT STREET ANIMAL HOSPITAL 2,600 S.F. @ 1 SPACE / 200 S.F. = 13 SPACES

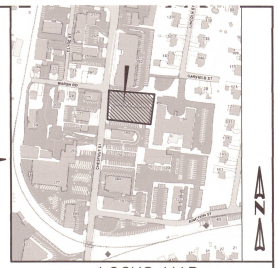
TOTAL REQUIRED = 62 SPACES

42 SPACES PROVIDED ON SITE. WAIVER REQUESTED FOR 20 SPACES.

3) 25' SETBACK REQUIRED FOR PORTIONS OF LOT ADJOINING RESIDENTIAL DISTRICT. 4' REQUIRED IF NOT ADJOINING RESIDENTIAL DISTRICT.

EXISTING PARKING IS COMPLIANT TO SIDE SETBACK FOR PORTIONS ADJOINING NON–RESIDENTIAL ZONE & IS EXISTING NON–CONFORMING FOR SIDE AND REAR PORTIONS ADJOINING RESIDENTIAL DISTRICTS





LOCUS MAP
(NOT TO SCALE)

PLAN REFERENCES:

1. "Plan of Land in Needham, Mass." dated Dec. 7, 1988, scale 1" =20' by Needham Survey Associates, Inc. recorded as plan No. 1363 of 1988 in Plan Book 376.

2. "Plan of Existing Parking Layout in Needham, Mass." dated Aug. 12, 1988, scale 1" = 20', by Needham Survey Associates, Inc.

3. "Plan of Land in Needham, Massachusetts" by Survey Resources dated Nov. 11, 1985 and filed with the Norfolk County Registry of Deeds as Plan No. 36 of 1986.

4. Plan to Accompany Petition for Acceptance, Chapel Street, Needham, Mass. dated Nov. 1928 by Lester C. Hollis, Engineer.

5. "Plan of Land in Needham, Mass., Jan. 16, 1980, Scale: 1" =40', Cheney Engineering Co., Inc." recorded as Plan No. 83 of 1980 in Book 5701 Page 33.

6. "Plan of Land in Needham, Mass., Mar. 24, 1968, Scale: 1" =40', Cheney Engineering Co., Inc." recorded as Plan No. 224 of 1969 in Book 4583 Page 345.

NOTES:

1.) Underground features have been compiled, in part, based upon information furnished by others. This information is to be considered approximate and Kelly Engineering Group, Inc. does not take responsibility for subsequent errors or omissions which may have been incorporated into this plan as a result. Additionally, other such features may exist on the site, the existence of which are unknown to Kelly Engineering Group, Inc. The size, location, and existence of all such features must be verified by the appropriate authorities prior to construction.

2.) The site detail and surface improvements depicted hereon were obtained by a field survey of the property in February of 2019 by Kelly Engineering Group, Inc.

CURRENT OWNER:

PETRINI CORPORATION
Deed Bk: 18702 Pg 291
Assessor's Parcel I.D. 199/046.0-0019

FLOOD ZONE DESIGNATION:

The surveyed premises is located within Flood Zone "X" (areas determined to be outside the 0.2% annual chance floodplain as shown on The Flood Insurance Rate Map (FIRM) For the Town of Needham, Mass. Dated 07/17/2012, Community Panel Number 25021C0038E.

GRAPHIC SCALE

30 0 10 20 40 80

(IN FEET)
1 inch = 20 ft.

COMMONWEALTH OF MASSACHUSETTS
DAVID NOEL KELLY
CIVIL
NO. 37942
REGISTERED PROFESSIONAL ENGINEER

David Noel Kelly P.E.
DN: cn=David Noel Kelly P.E., o=Kelly Engineering Group, Inc., email=dkelly@kellyengineeringgroup.com, c=US
Date: 2019.06.05 16:35:57 -04'00'

Steven Horsfall
2019.06.05
17:30:29 -04'00'

SCALE 1" = 20'				
DATE 06/05/19	REV	DATE	REVISION	BY
SHEET 1 OF 1				
PLAN NO. 2019–024–LA00				
DISK REF NO. F:\P\2019–024				
DRAWN BY GSH				
CHKD BY GSH				
APPD BY SMH				

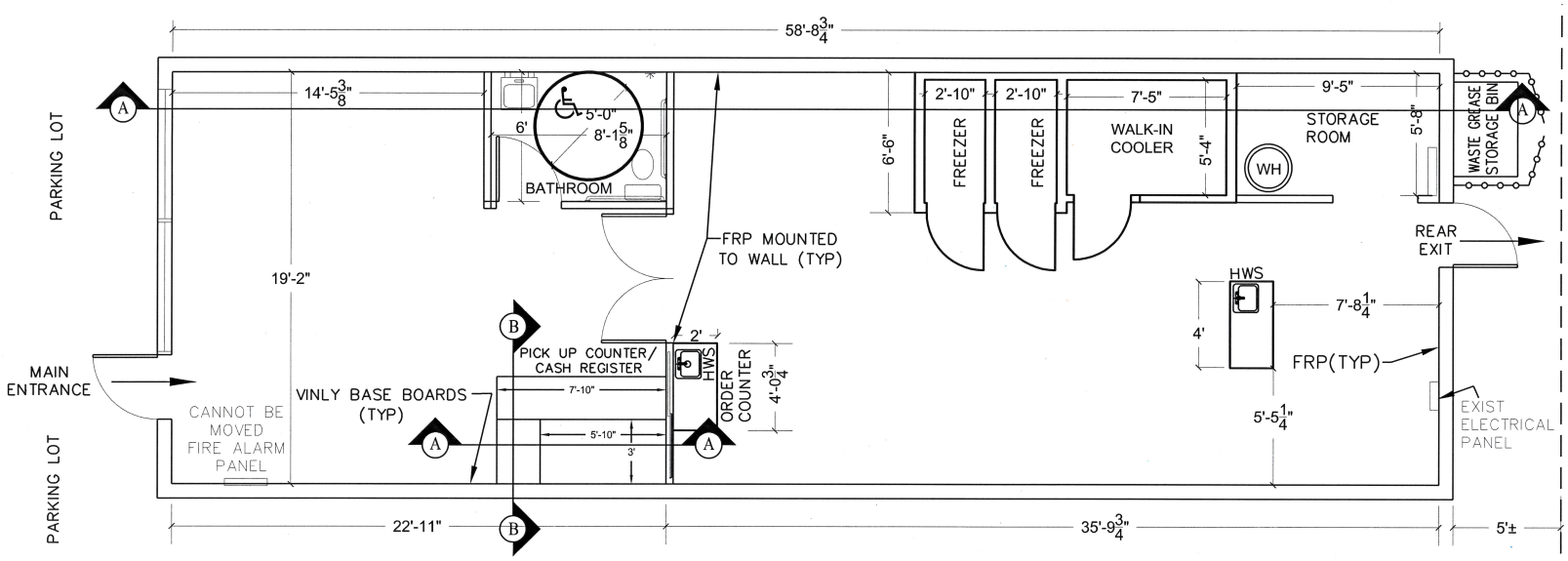
PETRINI
320–332 CHESTNUT STREET
NEEDHAM, MASSACHUSETTS

PLAN TO ACCOMPANY SPECIAL PERMIT APPLICATION

KELLY ENGINEERING GROUP, INC.
CIVIL ENGINEERING CONSULTANTS
0 CAMPANELLI DRIVE · BRAINTREE MA · 02184
PHONE: 781 843 4333 FAX: 781 843 0028

COMMONWEALTH OF MASSACHUSETTS
STEVEN M. HORSFALL
No. 41608
REGISTERED PROFESSIONAL ENGINEER

SHEET NO.
1



LEGEND:

HWS	HANDWASH SINK
FRP	FIBERGLASS REINFORCED POLYESTER PANEL
WH	WATER HEATER

FLOOR LAYOUT PLAN

SCALE: 3/16"=1'

NOTES:

1. KITCHEN PLUMBING SHALL BE INSPECTED & APPROVED BY PLUMBING INSPECTOR.
2. WALLS AT PREP TABLE AND 3-BAY SINK AREAS ARE IMPERVIOUS NON-CORRADBALE MATERIAL, STAINLESS STEEL OR. FIBERGLASS REINFORCED POLYESTER PANEL (FRP).
3. COOKING FLOOR IS QUARRY TILE.
4. ALL FOOD PREP FLOOR AREAS ARE POURED SEAMLESS CONCRETE.
5. KITCHEN CEILING IS PLASTIC COATED.
6. SEE SITE PLAN FOR TRASH DUMPSTER & RECYCLING BIN.
7. GREASE STORAGE CONTAINER IS PROVIDED ON-SITE AT THE REAR OF THE BUILDING WITHIN FENCE ENCLOSURE.
8. THERE IS NO BASEMENT IN THIS UNIT.

COMMONWEALTH OF MASSACHUSETTS
HOOSHMAND S. AFSHAR
No. 38375
PROFESSIONAL
12/11/19

TAJ ENGINEERING, LLC
CIVIL & STRUCTURAL ENGINEERS. LAND SURVEYORS
PROJECT MANAGEMENT. PERMITTING
225 STEDMAN ST. SUITE 36B. LOWELL, MA. 01851
7 MONTVIEW ROAD. CHELMSFORD, MA. 01824
PHONE: 978-250-8173 FAX: 978-770-0632
Info@tajengineering.net

PROPOSED CATERING KITCHEN
FLOOR LAYOUT PLAN
324 CHESTNUT ST.
NEEDHAM, MA

PREPARED FOR:
PARSHAVI PATEL

JOB. NO:	19-596
DATE:	12/11/2019
SCALE:	3/8" = 1 FT.
SHEET:	1 OF ??

SHEET NO.
A.1.1

GEORGE GIUNTA, JR.
ATTORNEY AT LAW*
281 CHESTNUT STREET
NEEDHAM, MASSACHUSETTS 02492
*Also admitted in Maryland

TELEPHONE (781) 449-4520 FAX (781) 465-6059

October 25, 2024

Town of Needham
Zoning Board of Appeals
Needham, Massachusetts 02492

Attn: Daphne M. Collins, Zoning Specialist

Re: Rainbow Angel, Inc.
250 Highland Avenue, Needham, MA

Dear Ms. Collins,

Please be advised this office represents Rainbow Angel, Inc. (hereinafter the Applicant and "Rainbow") in connection with the proposed operation of a dine-in restaurant with accessory take-out at the property known and numbered 250 Highland Avenue, Needham, MA (hereinafter the "Premises"). In connection therewith, submitted herewith, please find the following:

1. Seven copies of a Completed Application for Hearing;

2. Seven copies of site plan and interior layout plan;

3. Seven copies of Memorandum in Support of Application of Rainbow Angel, Inc.;

4. Authorization letter from owner / landlord; and

5. Check in the amount of $500 for the applicable filing fee.

The Premises is situated at the corner of Highland Avenue and First Avenue, in the Highland Commercial-128 Zoning District. It is the location of the former Mighty Subs restaurant, which contained 62 seats and did a good amount of take-out business. Mighty Subs closed in July, 2023, leaving the Premises vacant and in rough shape.

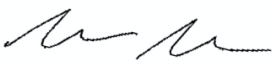
The owners of Rainbow have been operating a high-quality Taiwanese restaurant at 108 Oak Street, in the Newton Upper Village neighborhood, since 2014. For several reasons, they now desire to relocate their business around the corner to the Premises. Given its proximity to their current location and its history of use for dine-in and take-out food service, the Premises is an excellent location for their proposed relocation.

With the exception of signage, Rainbow is not proposing any alterations or changes to the exterior of the Premises. Moreover, Rainbow is similarly not proposing any change or alteration to the existing parking area.

Although the Premises was used for food services purposes for over 30 years, the Building Commissioner has determined that the new restaurant must undergo review from scratch and that new special permits are required. In particular, a special permit for the use itself is required pursuant to Section 3.2.5.2 and a special permit pursuant to Section 5.1.1.5 waiving strict adherence with the off-street parking requirements of Sections 5.1.2 and 5.1.3 is also required.

Kindly schedule this matter for the next hearing of the Board of Appeals. If you have any comments, questions or concerns, or if you require any further information in the meantime, please contact me so that I may be of assistance.

Sincerely,



George Giunta, Jr.

ZBA Application For Hearing

Applicants must consult with the Building Inspector prior to filing this Application. *Failure to do so will delay the scheduling of the hearing.*

Applicant Information

Applicant Name	Rainbow Angel, Inc.		Date: 10/25/24
Applicant Address	1 Centennial Drive, Norwood, MA 02062		
Phone	617-910-8171	email	chingchu114@yahoo.com

Applicant is ☐Owner; ☑Tenant; ☐Purchaser; ☐Other_____

If not the owner, a letter from the owner certifying authorization to apply must be included

Representative Name	George Giunta, Jr., Esq.		
Address	281 Chestnut Street, Needham, MA 02492		
Phone	617-840-3570	email	george.giuntajr@needhamlaw.net

Representative is ☑Attorney; ☐Contractor; ☐Architect; ☐Other_____

Contact ☐Me ☑Representative in connection with this application.

Subject Property Information

Property Address	250 Highland Avenue (a/k/a 254 Highland Avenue)		
Map/Parcel Number	Map 300 / Parcel 58	Zone of Property	Highland Commercial-128 Zoning District

Is property within 100 feet of wetlands, 200 feet of stream or in flood Plain?
☐Yes ☑No

Is property ☐Residential or ☑Commercial

If residential renovation, will renovation constitute "new construction"?
☐Yes ☐No

If commercial, does the number of parking spaces meet the By-Law requirement? ☐Yes ☑No
Do the spaces meet design requirements? ☐Yes ☑ No

Application Type (*select one*): ☑Special Permit ☐Variance ☐Comprehensive Permit ☐Amendment ☐Appeal Building Inspector Decision

ZBA Application For Hearing

Existing Conditions: Commercial 1,584 square foot building on 5,541 square foot lot and associated
parking area. Building is former location of Mighty Subs, which closed in July, 2023.

Statement of Relief Sought:
1. Special permit pursuant to Section 3.2.5.2 for a a restaurant serving meals for consumption on the premises and at tables with service provided by waitress or waiter.
2. Special Permit pursuant to Section 3.2.5.2 for a take-out operation accessory to said restaurant
3. Special permit pursuant to Section 5.1.1.5 waiving strict adherence to the requirements of Section 5.1.2 (Required Parking) and Section 5.1.3 (Parking Plan and Design Requirements); and

4. All other relief as may be necessary for the operation of a dine-in / take-out restaurant in the commercial building known and numbered 250 Highland Avenue.

Applicable Section(s) of the Zoning By-Law:
3.2.5.2, 5.1.1.5, 5.1.2, 5.1.3, 7.5.2 and any other applicable seciton or By-Law.

If application under Zoning Section 1.4 above, list non-conformities:

	Existing Conditions	**Proposed Conditions**
Use		
# Dwelling Units		
Lot Area *(square feet)*		
Front Setback *(feet)*		
Rear Setback *(feet)*		
Left Setback *(feet)*		
Right Setback *(feet)*		
Frontage *(feet)*		
Lot Coverage *(%)*		
FAR *(Floor area divided by the lot area)*		
Numbers must match those on the certified plot plan and supporting materials		

ZBA Application For Hearing

Date Structure Constructed including additions:	Date Lot was created:

Submission Materials	Provided
Certified Signed Plot Plan of Existing and Proposed Conditions *(Required)*	
Application Fee, check made payable to the Town of Needham Check holders name, address, and phone number to appear on check and in the Memo line state: "ZBA Fee – Address of Subject Property" *(Required)*	
If applicant is tenant, letter of authorization from owner *(Required)*	
Electronic submission of the complete application with attachments *(Required)*	
Elevations of Proposed Conditions *(when necessary)*	
Floor Plans of Proposed Conditions *(when necessary)*	

Feel free to attach any additional information relative to the application. Additional information may be requested by the Board at any time during the application or hearing process.

❖❖❖❖

I hereby request a hearing before the Needham Zoning Board of Appeals. I have reviewed the Board Rules and instructions.

I certify that I have consulted with the Building Inspector_____
date of consult

Date: October 25, 2024 Applicant Signature Rainbow Angel, Inc. George Giunta Jr
by its attorney,
George Giunta, Jr., Esq.

An application must be submitted to the Town Clerk's Office at townclerk@needhamma.gov and the ZBA Office at dcollins@needhamma.gov

TO: THE MEMBERS OF THE BOARD OF APPEALS
TOWN OF NEEDHAM, MA October 25, 2024

MEMORANDUM IN SUPPORT OF
APPLICATION OF
RAINBOW ANGEL, INC
250 Highland Avenue, Needham, MA

The applicant, Rainbow Angel, Inc. (hereinafter, interchangeably, the "Applicant" and "Rainbow"), seeks a Special Permit pursuant to Section 3.2.5.2 of the Needham Zoning By-Law for a restaurant serving meals for consumption on the premises and at tables with service provided by waitress or waiter, and a take-out operation accessory to such restaurant.; a Special Permit pursuant to Section 5.1.1.5, waiving strict adherence with the off-street parking requirements of Section 5.1.2 (Required Parking) and Section 5.1.3 (Parking Plan and Design Requirements); and all other relief as may be necessary and appropriate in connection with the operation of a dine-in / take-out asian restaurant at the property known and numbered 250 Highland Avenue (the "Premises").

PRESENT USE / EXISTING CONDITIONS

The Premises is part of the property shown as parcel 58 on sheet 300 of the Assessor's Map for the Town of Needham, and is located within the Highland Commercial-128 Zoning District. The property contains approximately 5,541 square feet of land with 55.78 feet of frontage on Highland Avenue and 86.42 feet of frontage on First Avenue. The Premises is occupied by an existing one-story commercial building, known and numbered both 250 Highland Avenue and 254 Highland Avenue, containing approximately 1,584 square feet of area. It was used and occupied for over thirty years as a dine-in / take-out restaurant; since approximately 1989, by Mighty Subs, which closed in July, 2023, with approximately 62 seats, and before that, since 1964, by Redd's Deli, with approximately 74 seats.[1]

PROPOSED USE / ACTIVITY

Since February, 2014, the Applicant has operated a Taiwanese restaurant in the Newton Upper Falls Village, at 108 Oak Street, Newton, under the name Jean and Lee Kitchen. The restaurant has been featured multiple times in the Boston Globe and since Covid, has done more take-out than dine-in business. At present, approximately 65% of business is derived from take-out orders.

For a variety of reasons, including the changes and commotion taking place in that neighborhood, they now would like to relocate just around the corner to Needham. Between its proximity to the existing restaurant and the fact that the Premises was used for over 30 years for dine-in and take-out food service, it seemed like an ideal location.

The new restaurant will feature much the same menu as at the Newton Upper Falls location, with a variety of authentic Taiwanese dishes, including several vegan options, savory noodle soups and flavorful stir-fries. The current menu is provided herewith as Exhibit D by way of example. The restaurant is expected to do much of its business via take-out, as at the current location, but will include 20 seats at tables for dine-in, as shown on the floor plan submitted herewith. The restaurant is expected to be open between the hours of 11 AM and 9 PM, six days each week; closed on Tuesdays. However, it is possible that operations may be expanded to seven days per week depending on business and availability of staff.

It is expected that a maximum of four to five employees will be on site at any given time: the owner / manager, a chef and two to three support staff. However, only the owner / manager will park on site, with all other employees utilizing off-site parking, public transportation or alternative means of transport.[2]

Notwithstanding the longstanding historical use of the Premises for food service use as set forth above, the Building Commissioner determined, for a number of reasons, that the proposed new restaurant needs to undergo review from scratch, and thus, special permits are required, both for the use and relative to parking.

---

[1] See Exhibit A, certificate of occupancy no. 15212, dated August 7, 1990, for Mighty Subs, Exhibit B, Building Permit No. 5586, dated June 15, 1964 for Redd's Deli, and Exhibit C, layout for Redd's Deli, depicting 74 seats, and. Mighty Subs maintained the same layout as Redd's, except that the large 12 seat table in the middle of the left side of the space was removed.

[2] Depending on the number of cars driven by staff, the Applicant will secure an appropriate number of off-site parking spaces or arrange alternate transportation.

PARKING

As indicated above, the Building Commissioner determined that the new restaurant would need to start from scratch with respect to permitting. Therefore, it either needs to comply with the provisions of Sections 5.1.2 (Required Parking) and 5.1.3 (Parking Plan and Design Requirement), or obtain a waiver. Section 5.1.2 sets forth various categories of uses and their associated parking demand, including a "restaurant" category which requires one space for every 3 seats, plus ten spaces per take-out service station. As a result, the new restaurant will require a total of 17 parking spaces, calculated as follows:

20 seats @ 1 space / 3 seats = 6.67 spaces = 7 spaces, rounded up + 10 spaces for take-out = 17 spaces

There are a total of 5 parking spaces located at the Premises, as shown on the site plan provided herewith. Whereas this is less than the total parking demand, a parking waiver of 12 spaces is required.

In addition, the existing parking area, which has been in existence since prior to the adoption of off-street parking requirements, complies with a few, but not all the current design requirements. In particular, the parking area does not comply with the requirements of section 5.1.3 (a) relative to illumination; (c) relative to handicap parking; (d) relative to driveway openings; (h) relative to parking space layout; (i) width of maneuvering aisle; (j) relative to parking setbacks; (k) relative to landscaping areas; (l) relative to trees; and (n) relative to bicycle racks. While the parking lot is pre-existing and no changes are proposed, a parking waiver from the design requirements is still required.

LAW

Massachusetts General Laws, Chapter 40A, Section 9 states as follows: "Special Permits may be issued only for uses that are in harmony with the general purpose and intent of the ordinances of the by-law, and shall be subject to general or specific provisions set forth therein; and that such permits may also impose conditions, safeguards, and limitations on time and use."

Section 3.2.5.2 of the Town of Needham Zoning By-Laws (Uses Permitted by Special Permit) requires the issuance of Special Permits for the operation of a "restaurant serving meals for consumption on the premises and at tables with service provided by waitress or waiter" as

well as a "take-out operation accessory to the above restaurant" in the Highland Commercial-128 Zoning District.[3]

Section 7.5.2.1 of the By-Laws (Finding and Determination), as applicable to the application of Rainbow, requires that prior to granting a special permit, the Board of Appeals must make a finding and determination that the proposed use of the Premises for dine-in restaurant with accessory take-out:

> (a) complies with the criteria or standards of section 3.2. of the By-Law which refers to the granting of the requested special permit;
>
> (b) is consistent with 1) the general purposes of the By-Law as set forth in paragraph 1.1,[4] and 2) the more specific objectives and purposes applicable to the requested special permit which may be set forth elsewhere in the By-Laws; and
>
> (c) is designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area.

Section 5.1.1.5 authorizes and allows the Board to waive strict adherence with the requirements of Sections 5.1.2 and 5.1.3 where a particular use, structure or lot, owing to special circumstances, does not warrant the application of the parking requirements of Section 5.1.2 or the design requirements contained in Section 5.1.3. In addition, pursuant to Section 5.1.1.5 the Board is directed to consider whether the issuance of the special permit would be detrimental to the Town or to the general character and visual appearance of the surrounding neighborhood and abutting uses and is further consistent with the intent of the Zoning By-Law.

DISCUSSION / ANALYSIS

The applicant contends that the proposed use of the Premises for a dine-in restaurant with accessory take-out complies with the requirements of Section 3.2.5.2 of the By-Law and is further in harmony with the general purpose and intent of the Zoning By-Law. The proposed use

[3] Section 3.2.5.2 also requires a special permit for a "take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere".

is compatible with current uses in the area, continues the long-standing use of the Premises for food service, and further does not interfere with the character of the neighborhood.

Section 3.2.5.2 requires a Special Permit for a dine-in restaurant with accessory take-out in the Highland Commercial-128 Zoning District. However, no additional requirements are imposed. Therefore, the proposed use will comply with the criteria and standards of Section 3.2.5.2 upon the issuance of the requisite Special Permit. Furthermore, the proposed use of the Premises is consistent with the requirements of Section 1.1, as the provision of quality prepared food will promote the convenience and welfare of the inhabitants of the Town of Needham.

The proposed use of the Premises for a dine-in restaurant with accessory take-out does not warrant the application of the parking requirements of Section 5.1.2, and the issuance of the requested parking waiver will not be detrimental to the Town or to the general character and visual appearance of the surrounding neighborhood and abutting uses and will further be consistent with the intent of the Zoning By-Law.

A significant portion of the calculated parking demand derives from the requirement of the By-Law applicable to take-out. However, as the Board is aware, the requirement of the By-Law for 10 parking spaces for a take-out station is arbitrary and does not accurately reflect reality. In addition, two-hour parking is allowed along the northerly side of Cabot Street, within easy walking distance of the Premises. Finally, the Premises was used for many years for dine-in and take out food service, with substantially more seating than currently proposed. In fact, Mighty Subs required a minimum of 31 parking spaces: 21 for the seats (62 seats @ 1 space / 3 seats = 20.67 spaces, rounded up = 21 spaces) and 10 for the take-out station. Thus, the proposed restaurant is a net reduction in parking demand of 14 spaces. So, whereas the proposed use is substantially similar to the prior use, but with substantially reduced seating, and whereas no material changes have been, or are being proposed for the property, conditions are substantially and materially the same and the issuance of a parking waiver is appropriate.

---

[4] Section 1.1 states that it is "The purpose of [the] By-Law [to] promote the health, safety, convenience, morals or welfare of the inhabitants of Needham; to lessen congestion in the streets; to conserve health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; to conserve the value of land and buildings; to encourage the most appropriate use of land and buildings; to encourage the most appropriate use of land throughout the Town and to preserve and increase amenities under the provisions of General Laws, Chapter 40A. The use, construction, alteration, height, area and location of buildings and structures and the use of premises in the town of Needham are regulated as [provided by the By-Laws]"

CONCLUSION

Based on the facts and discussion set forth above, Rainbow asserts that the proposed use of the Premises for a dine-in restaurant with accessory take-out will not affect the neighborhood, surrounding area or the Town in any adverse material or significant way. For over 30 years the Premises was used and operated for substantially the same use, but with more seats, without significant issue or incident. While the type of food is different and the number of seats reduced, these factors are not reasonably likely to lead to any increased impact; and are actually likely to result in reduced impact.

Moreover, while parking waivers are necessary, the calculated parking demand does not accurately reflect actual demand, and a substantially similar use, with an even greater parking demand, operated without incident for many years. Furthermore, the parking area has been in existence since prior to the adoption of off-street parking requirements, and no changes or modifications are proposed thereto.

The use of the Premises for a dine-in restaurant with accessory take-out is in harmony with the general purpose and intent of the By-Law, and there are special circumstances that warrant the granting of parking waivers. Therefore, Rainbow asserts that the issuance of the requested special permits is both proper and appropriate and should be granted.

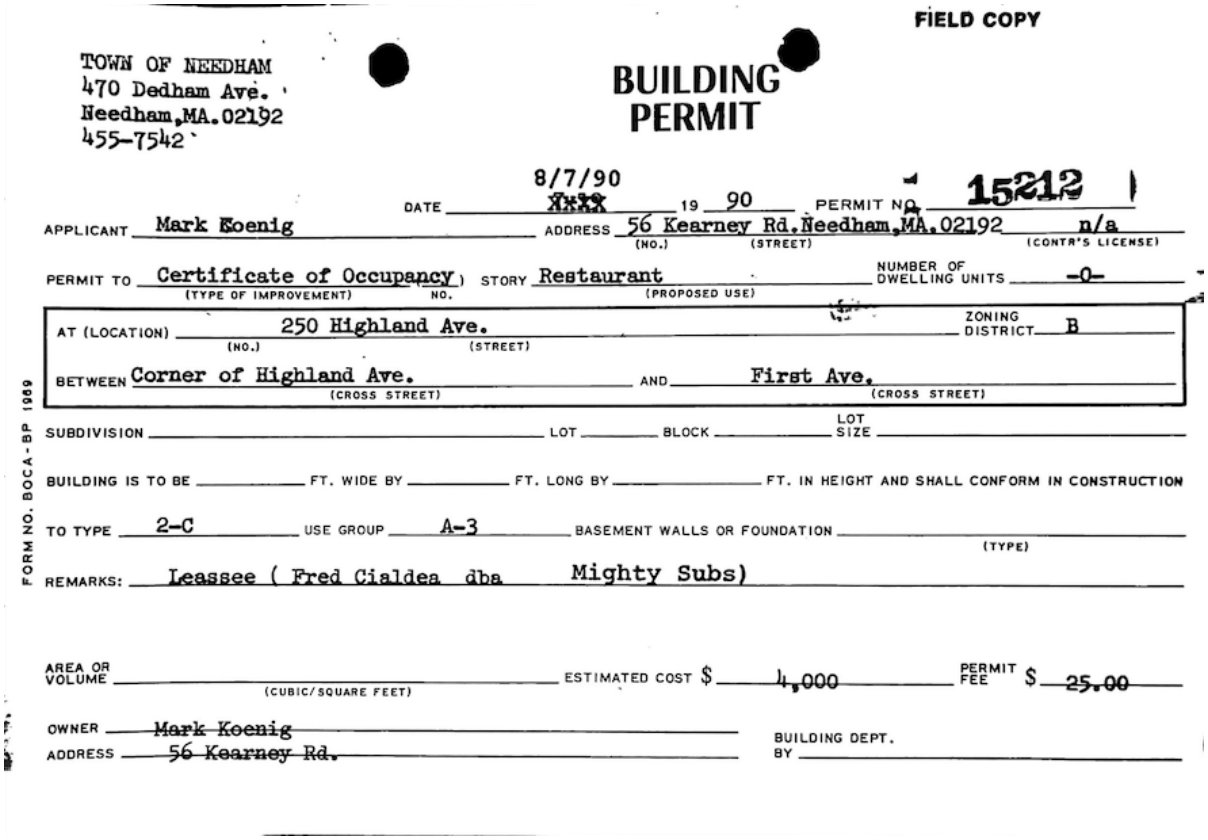
Respectfully submitted,
Rainbow Angel, Inc.
by its attorney,

_____

George Giunta, Jr., Esq.
281 Chestnut Street
Needham, Massachusetts 02492
781-449-4520

EXHIBIT A

Certificate of Occupancy no. 15212



FIELD COPY

TOWN OF NEEDHAM
470 Dedham Ave.
Needham,MA.02192
455-7542

BUILDING PERMIT

DATE 8/7/90 (XXX) 19 90 PERMIT NO. 15212

APPLICANT Mark Koenig ADDRESS 56 Kearney Rd. Needham, MA. 02192 n/a
(NO.) (STREET) (CONTR'S LICENSE)

PERMIT TO Certificate of Occupancy ( ) STORY Restaurant NUMBER OF DWELLING UNITS -0-
(TYPE OF IMPROVEMENT) NO. (PROPOSED USE)

AT (LOCATION) 250 Highland Ave. ZONING DISTRICT B
(NO.) (STREET)

BETWEEN Corner of Highland Ave. AND First Ave.
(CROSS STREET) (CROSS STREET)

SUBDIVISION LOT BLOCK LOT SIZE

BUILDING IS TO BE FT. WIDE BY FT. LONG BY FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION

TO TYPE 2-C USE GROUP A-3 BASEMENT WALLS OR FOUNDATION
(TYPE)

REMARKS: Leassee (Fred Cialdea dba Mighty Subs)

AREA OR VOLUME (CUBIC/SQUARE FEET) ESTIMATED COST $ 4,000 PERMIT FEE $ 25.00

OWNER Mark Koenig
ADDRESS 56 Kearney Rd.

BUILDING DEPT.
BY

FORM NO. BOCA-BP 1969

EXHIBIT B

Building Permit No. 5586

APPLICATION

Plans must be submitted and approved by this Department before a permit for erection will be granted. Separate application required for every building.

No Construction to be Started until Permit is Issued.

Needham, Mass., June 15 1964

No. 5586

TO THE INSPECTOR OF BUILDINGS:

Propose a new 1 story addition (for restaurant) - (as per plan)

The undersigned hereby applies for a permit to build, according to the following specifications:

1. Purpose of Building Prop. alterations - Non-Bearing partitions & installing non-bearing partitions & ceiling
2. First-class ..... Second-class ..... Third-class .....
   Fourth—Class ..... Fifth—Class ..... Sixth—Class .....
3. Zoning District Bus 250 (Assessor's records)
4. Location, St. and No. ~~237~~ Highland Ave. Nearest St. Oak
5. Owner Mr. Nathaniel Cohen Address Natick Tel. .....
6. Builder Ken Mercer Address 221 No. Beacon St. Brighton Tel. AL4-0300
7. Size of Building—Front ..... Rear ..... Depth .....
8. No. of Feet Level of Ground to Highest Point of Roof .....
9. Set Back from Street ..... Right Side ..... Left Side .....
10. Area of Lot ..... No. of Rooms ..... Baths ..... Lavs. .....
11. Material of Foundation ..... Material of Underpinning .....
12. Size of Girder ..... Kind .....
13. Size of Sills ..... Posts .....
14. First Floor Timbers ..... Second ..... Third .....
15. Size of Corner Braces ..... Outside Window and Door Studs .....
16. Size of Bridging ..... Rafters .....
17. Roof Covering ..... Exterior Wall Covering .....
18. Is the Roof to be Flat, Pitch, Mansard or Hip .....
19. Heated by Steam, Furnace, Hot Water, Air Conditioned .....
20. Oil Burner ..... Gas Fired ..... Coal .....
21. Plumbing ✓ Wiring ✓
22. Estimated Value 3 000.00
23. Plans Submitted .....

In addition to the foregoing statement this building will be constructed under the Building and Zoning By-Laws of the Town of Needham. It shall not be lawful to start construction or demolition before obtaining a formal Permit. Permit card to be displayed until work is completed.

REQUIRED _____ FURNISHED

_____ $100.00 - BUILDING

_____ ST. B.C. FEE .50

_____ SANITARY BOARD

Fee, $ 10.00

Sign Here Benjamin Keers

Address 221 No. Beacon St. Brighton Mass

EXHIBIT C

Redd's Deli Layout

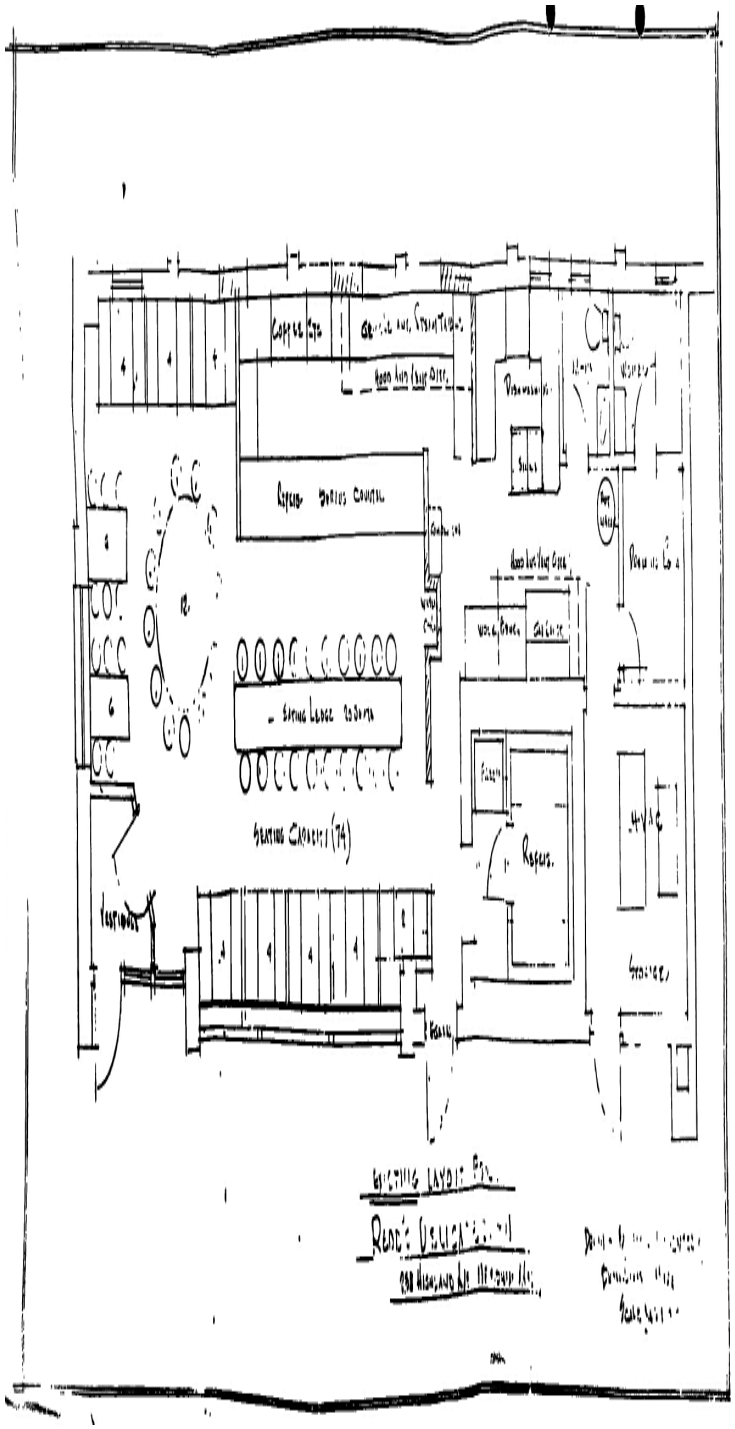


EXHIBIT D

Current Menu Offerings

SPECIALS Homemade Sweetened Soy Milk Fried Dough Fried Mini Steamed Buns W/Condensed Milk Purple Glutinous Rice Ball Sesame Fried Buns Crispy Pumpkin Pastry filled w/red bean paste coated in sesame. Crispy Taro Pastry filled w/ red bean paste coated in sesame Three cup fresh Calamari Chili Hot Pepper w/Chicken Gizzards Chive Pockets Chive Pork Steamed Dumpling	**COLD DISH** Five Spiced Roast Beef Beef Shank & Tripe in Chill Oil Spicy Beef Tendon Spicy Pork Tripe Shredded Pork Ear Tofu Skin Taiwanese Style Kim Chi Salted peanut Anchovies w/Peanuts
SOUP Pickled Mustard Fish Fillet Soup West Lake Fish Fillet Parsley Soup West Lake Minced Beef Parsleys Soup Tofu & Vegetable Soup Wonton Soup Hot & Sour Soup Egg Drop Soup	**TAIWANESE RICE BOX** Shrimp, Beef, Chicken & Veggie Over Rice Fried Pork Chop Over Rice Fried Chicken Cutlet Over Rice Braised Pork Over Rice Minced Pork Over Rice
STARTERS Stinky Tofu Salt & Pepper Chicken (bone-in) Beef on Sticks (4) Spicy Fried Chicken Wings (6) Xiao Long Bao (8) Pan Fried Pork Dumplings (8) Sliced Roast Beef Wrap Steamed Buns With Braised Pork (2) Chicken on Sticks (4) Fried Chicken Wings (6) Steamed Wonton in Hot Sauce Pan Fried Pork Buns (3) Crab Rangoon (8) Taiwanese Steamed Sticky rice Taiwanese Sausage (w/ fresh garlic) Scallion Pancake Vegetarian Egg Rolls (2) Savory Tea Braised Egg(6) Taiwanese Meatball (Bah-wan) Fried mini buns w/condensed milk	**SEAFOOD** Szechuan Roasted Fish Bubbling Flounder Fish Fillets Salt & Pepper Shrimp Pineapple Shrimp Delight of Three (shrimp, beef, chicken & vegetables) Salt & Pepper Calamari Kung Pao Calamari Salt & Pepper Flounder Fish Fillet Szechuan Spicy Flounder Fish Fillet Sweet & Sour Flounder Fish Fillet Stir Fried Shrimp with Cashew Shrimp with Broccoli Shrimp with Mixed Vegetables Shrimp with String Bean & Ginger Baby Shrimp with Tofu Stir Fried Flounder Fish Fillet w/vegetables Salt & Pepper Soft Shell Crab Steamed Clam w/ Minced Shrimp in Clear Noodles. 3 Cup Calamari Salt & Pepper Yellow Croaker

VEGETABLES	LAMB/BEEF
Three Cup Fried Tofu with Chinese Eggplant Stir-Fried Tomato with Egg Home Style Fried Tofu with Mixed Vegetables Ma Po Tofu Chinese Eggplant with Basil Leaves Chinese Eggplant with Garlic Sauce Broccoli in Garlic Sauce Fried Tofu w/ Brocooli in Garlic Sauce Sautéed String Beans Sautéed Shanghai Baby Bok Choy Sautéed Taiwanese Cabbage Sautéed Pea Pod Stem	Lamb in Spicy Sauce Cumin Lamb Bubbling Flank Steak Orange Beef * Sesame Beef Beef with Hot Chill Pepper Beef with Mixed Vegetables Beef with String Bean & Ginger Beef with Broccoli Kung Pao Beef w/Peanuts Stir fry Beef & Vegetables in Sha-Cha Sauce
CHICKEN/DUCK	**PORK**
Diced Fried Chicken with Chill Dry Pepper Three Cup Chicken (bone-in) General Chicken Pineapple Chicken Orange Chicken Sesame Chicken Chicken with Broccoli Chicken with Cashew Nuts Chicken with Garlic Sauce Chicken with Mixed Vegetables Chicken with String Bean & Ginger Kung Pao Chicken w/Peanuts Stir Fried Spicy Chicken Mango Chicken Crispy Duck (half) Salted Duck (half) Kung Pao Chicken	Salt & Pepper Pork Ribs Sweet & Sour Pork Ribs Taiwanese Style Twice Cooked Pork Pork Tripe with Chili Hot pepper Spicy Ground Pork with Clear Noodle Shredded Pork with Bamboo Shoot & Dried Tofu Ko Cha Dish *(Pork, Calamari, Dried Tofu & Vegetables) Shredded Pork with String Bean & Ginger Chili Hot Pepper w/Pork Instestine (FLY HEAD) Minced Pork w/ Chive Vegetables Braised Ground Pork Meatball in Brown Ssauce Pork Belly Stewed w/ Bamboo Shoots
NOODLE SOUP	**HOT POT**
Seafood with Vegetables Noodle Soup Spicy Beef Sirloin Noodle Soup Spicy Beef Tendon Noodle Soup Pork with Pickled Cabbage Noodle Soup Pork with Snow Cabbage Noodle Soup Abalone w/ Vegetable Noodle Soup.	Spicy Fish Fillet, Tofu & Vegetables w/Clear Noodle Hot Pot Seafood, Tofu & Vegetable w/Clear Noodle Hot Pot Beef Sirloin, Tofu & Vegetable w/Clear Noodle Hot Pot Intestine with Tofu Hot Pot
FRIED RICE / RICE CAKE	**STIR-FRIED NOODLE**
Rice Cake (Pick one: Vegetables, chicken, pork, beef, shrimp) House Fried Rice (includes chicken, pork & shrimp) Taiwanese Sausage Fried Rice Fried Rice (Pick one: Vegetables, chicken, pork, beef, shrimp) Brown Rice White Rice Stir Fried Seafood Rice Cake	Sha Cha Beef Noodle House Lo-Mein (includes chicken, pork & shrimp) Lo-Mein (Pick one: Vegetables, chicken, pork, beef, shrimp) Rice Noodle (Pick one: Vegetables, chicken, pork, beef, shrimp) Stir Fried Seafood Udon Stir Fried Beef Chow Foon
DESSERTS Fried Taro Ball w/ Red Bean Ginger Silken Tofu Custard with Peanuts 2pcs Pumpkin Pastry filled w/Red Bean Paste Fried mini buns w/ condensed milk	

Town of Needham
Zoning Board of Appeals
Needham, Massachusetts 02492

Attn: Daphne M. Collins, Zoning Specialist

Re: 254 Highland Avenue, Needham, MA
Application for Zoning Relief

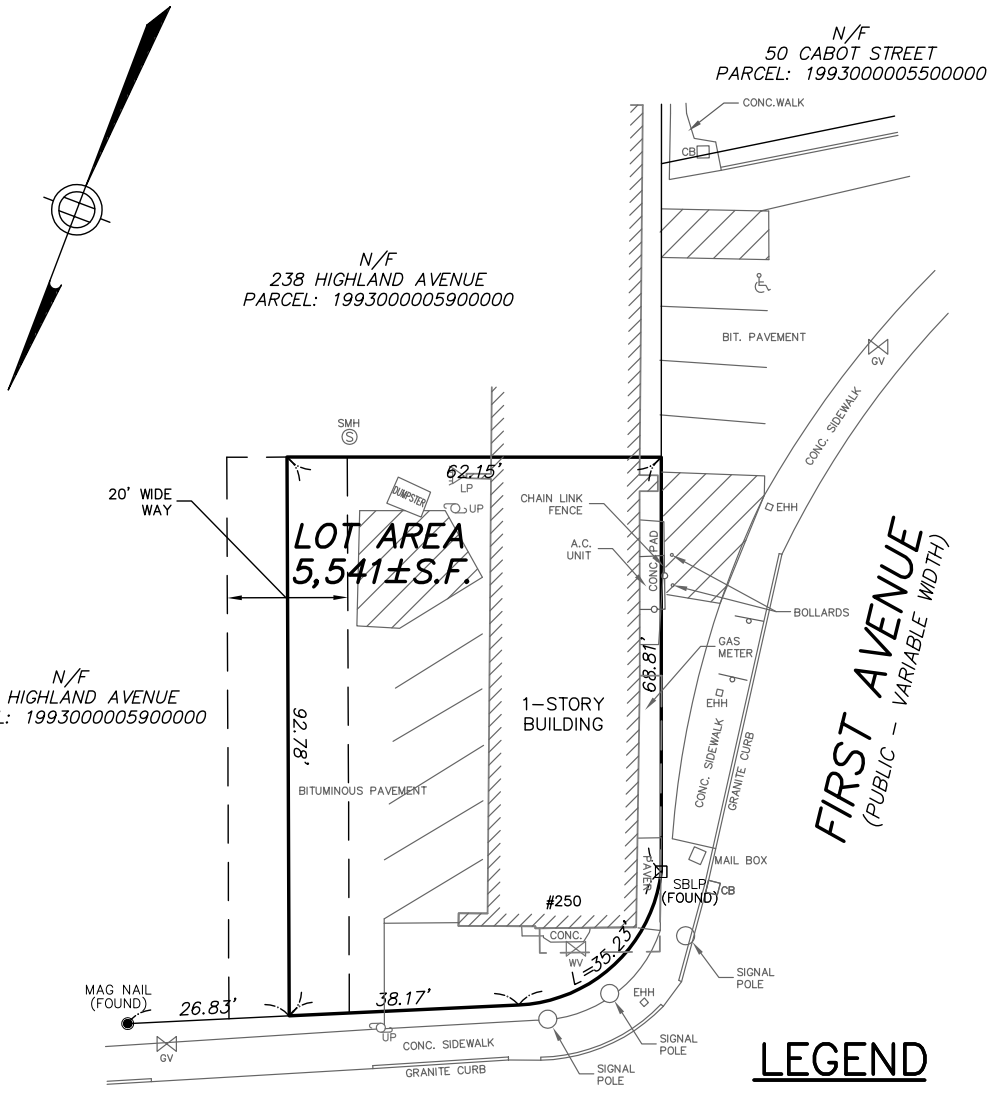
Dear Mrs. Collins,

Please accept this letter as confirmation that 250 Highland, LLC, owner of the commercial property known and numbered 254 Highland Avenue, Needham, MA, also known as 250 Highland Avenue (the "Premises"), has authorized Rainbow Angel, Inc., and its principal, Ching C.L. Cheng, tenant, acting on its own or through its attorney, George Giunta, Jr., Esquire, to make application for special permits and any and all other zoning, planning, general by-law and other relief that may be required or appropriate in connection with the use of the Premises for a restaurant serving meals for consumption on the premises and at tables with service provided by waitress or waiter, including a take-out operation accessory thereto, or other food service related use. In connection therewith, Rainbow Angel, Inc., Ching C.L. Cheng and Attorney Giunta are specifically authorized to execute, sign, deliver and receive all necessary documentation related thereto, including, without limitation, Application for Hearing.

Sincerely,

250 Highland, LLC
Sylvia Makarios

By
duly authorized Sylvia Makarios, Manager



LEGEND

- EXISTING STREET SIGN
- WV — EXISTING WATER VALVE
- GV — EXISTING GAS VALVE
- EXISTING UTILITY POLE
- EHH — EXISTING ELECTRIC HANDHOLE
- EXISTING SEWER MANHOLE
- CB — CATCH BASIN

GRAPHIC SCALE

20 0 10 20 40

1" = 20'

ZONE: HIGHLAND COMMERICAL

RECORD OWNER:
250 HIGHLAND LLC
L.C. CERT# 210676

PLAN REFERENCE:
LOT 4 ON L.C. PLAN No. 28413-C

COMMONWEALTH OF MASSACHUSETTS
SCOTT M. CERRATO
No. 50049
PROFESSIONAL LAND SURVEYOR

I HEREBY CERTIFY THAT THIS PLAN IS BASED ON AN ACTUAL INSTRUMENT SURVEY MADE ON THE GROUND IN OCTOBER 2024 AND THE STRUCTURES DEPICTED HEREON ARE LOCATED AS SHOWN.

DATE _____ SIGNATURE _____

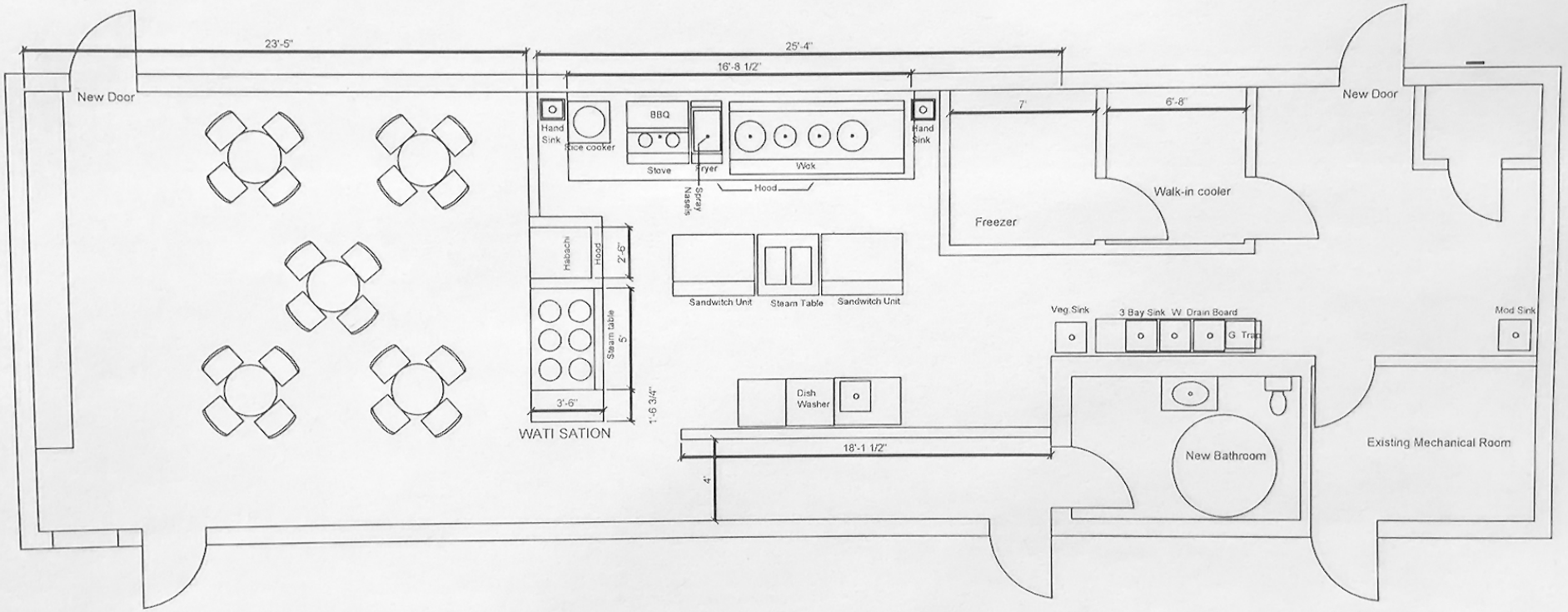
Cerrato Land Surveying

PLOT PLAN

250 HIGHLAND AVENUE
NEEDHAM, MASSACHUSETTS
PARCEL ID: 1993000005800000

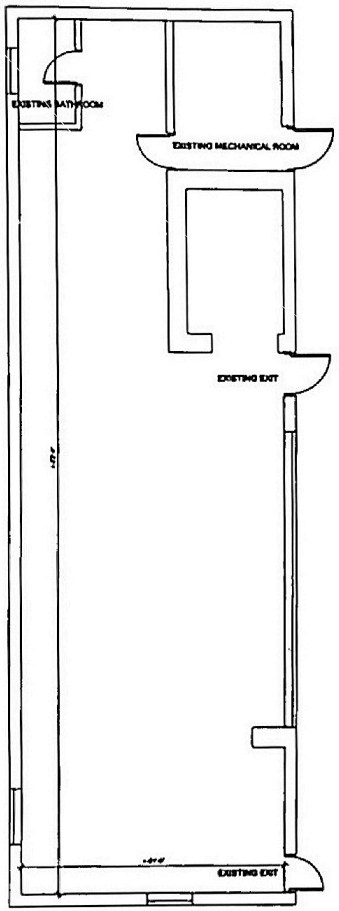
SCOTT CERRATO, PLS
51 WAREHAM STREET
MEDFORD, MA. 02155

OCTOBER 5, 2024
PHONE: (781) 775-3724
www.cerrato-survey.com

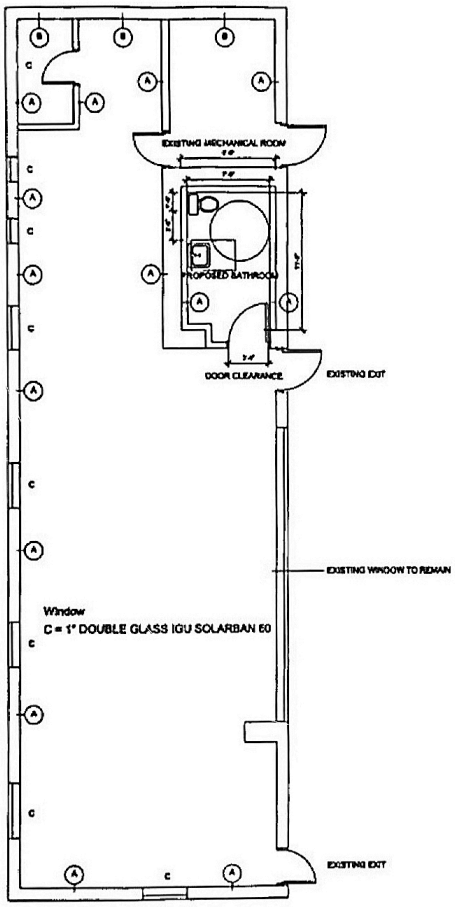


PROJECT:

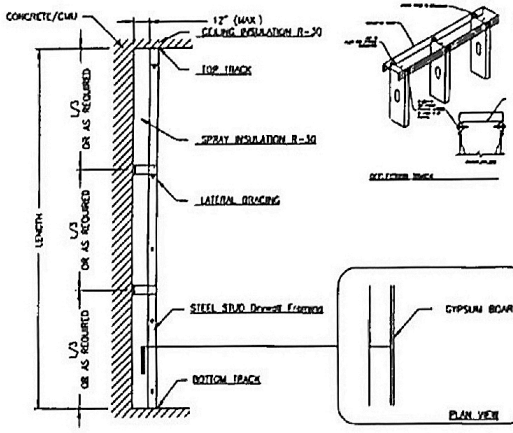
250 HIGHLAND AVE.
NEEDHAM, MASS.



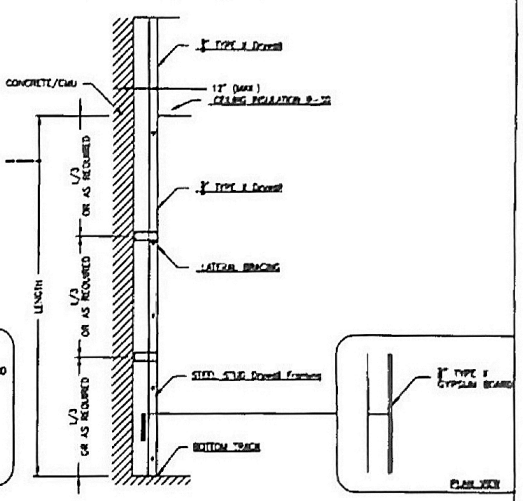
EXISTING PLAN



PROPOSED PLAN



1 TYPICAL WALL A
TYPICAL FURRING WALL



1 TYPICAL WALL B
TYPICAL FURRING WALL

Project : This submission is for the perimeter wall insulation, adding one ADA bathroom and ceiling insulation.

Fire separation requirements, fire protection system, Exit requirements are not part of this drawings and should be coordinated with the future tenant.

Suite 250 Highland Ave Needham MA The suite located within an existing one story building. Unprotected non sprinklered

EXISTING USE HIGHLAND COMMERCIAL-128.

TOTAL FLOOR AREA 1581+- SQ FT No change in area

No changes to structure of building
Fire protection plan should be provided by another company and aporove by Fire Department.

The general contractor and his/her sub-contractor shall conform to the requirements of the latest IBC and as amended by the Massachusetts building code and coordinate with the City of Needham Fire Department for all fire alarm systems and requirements prior to commencing work

The general contractor and the sub-contractor shall conform to all state, local codes and coordinate with the City of Needham MA inspectional department and fire department for final locations of controls, exists signs, lighting emergency lighting etc.

REGISTERED ARCHITECT
ALIREZA FARID
No. 651221
COMMONWEALTH OF MASSACHUSETTS

REV NO.	DESCRIPTION TO REVISION	REV BY	DATE
1	ISSUE FOR BUILDING PERMIT	AF	MAR 11 2024

Mr Theodore Markatos

250 Highland Ave Needham MA

GEORGE GIUNTA, JR.
ATTORNEY AT LAW*
281 CHESTNUT STREET
NEEDHAM, MASSACHUSETTS 02492
*Also admitted in Maryland

TELEPHONE (781) 449-4520 FAX (781) 465-6059

October 25, 2024

Town of Needham
Zoning Board of Appeals
Needham, Massachusetts 02492

Attn: Daphne M. Collins, Zoning Specialist

Re: DEI Incorporated
695 Highland Avenue, Needham, MA

Dear Ms. Collins,

Please be advised this office represents DEI Incorporated (hereinafter the Applicant and "DEI") in connection with the proposed alteration of the property known and numbered 695 Highland Avenue, Needham, MA (hereinafter the "Premises") and its continued use for bank purposes. In connection therewith, submitted herewith, please find the following:

1. Seven copies of a Completed Application for Hearing;

2. Seven copies of site and elevation plans;

3. Seven copies of Memorandum in Support of Application of DEI Incorporated;

4. Authorization letter from owner / landlord agent; and

5. Check in the amount of $200 for the applicable filing fee.

The Premises is located at the corner of Highland Avenue and Webster Street, and is occupied by an existing one-story branch bank building with associated drive-up banking. The building and the use of the Premises for bank purposes was authorized by Variance, dated October 14, 1969, issued to Mary W. Mack and Needham National Bank, as modified and affected by Decision of the Board of Appeals, dated August 16, 2007, issued to Sovereign Bank. The building was most recently used as Santander Bank branch, and closed in 2023. Dedham Savings bank intends to use and occupy the Premises as a branch bank.

In connection therewith, Dedham Savings, through their representative, DEI, would like to make certain modifications to the building and the site. First, they would like to reconstruct the drive-up canopy, keeping it in the same location, but making it slightly bigger so that it extends just under two feet further from the building. Second, they would like to add new landscaping to improve the visual effect and appeal. Third, they would like to reconfigure a portion of the parking area, to provide additional landscaping and better movement on site. All these modifications comply with applicable dimensional requirements, although the existing parking area does not comply with current design requirements.

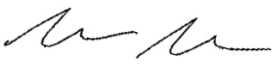
In order to effectuate the aforesaid changes, plan substitution and / or additional relief is required pursuant to the 1969 variance. In addition, because the existing parking area does not comply with current applicable design requirements, a design waiver pursuant to Section 5.1.1.5 is required for the parking related modifications.

In addition, the 1969 variance contains several conditions, including a prohibition on use or transferability by anyone other than the original grantees. This condition was compliant when imposed. But as a result of subsequent amendments to the Zoning Enabling Act, such condition is now prohibited and therefore in violation of applicable law. As a result, the Applicant has asked that such condition be removed.

Finally, one of the other conditions was that the Premises always include a total of 17 parking spaces. This condition was imposed prior to the adoption of off-street parking requirements and appears to have been based on the original plan for a two-story building. Under current parking requirements, the building, as actually constructed, requires a total of 8 parking spaces. Whereas there has been a change in circumstance, notably, the adoption of off-street parking requirements and the construction of a small than anticipated building, the Applicant has asked that such condition be removed or modified. As a part of the modifications proposed, three parking spaces would be removed, leaving 14 spaces on site; six more than required. Therefore, if modified, the Applicant has asked that such condition only require 14 spaces.

Kindly schedule this matter for the next hearing of the Board of Appeals. If you have any comments, questions or concerns, or if you require any further information in the meantime, please contact me so that I may be of assistance.

Sincerely,



George Giunta, Jr.

ZBA Application For Hearing

Applicants must consult with the Building Inspector prior to filing this Application. *Failure to do so will delay the scheduling of the hearing.*

Applicant Information

Applicant Name	DEI Incorporated (Attn: Jennifer King)		Date: 10/25/24
Applicant Address	1550 Kemper Meadow Drive, Cincinnati, OH 45240		
Phone	513-699-4718	email	jking@dei-corp.com

Applicant is ☐Owner; ☐Tenant; ☐Purchaser; ☑Other GC for prospective tenant, Dedham Savings

If not the owner, a letter from the owner certifying authorization to apply must be included

Representative Name	George Giunta Jr, Esq.		
Address	281 Chestnut Street, Needham, MA 02492		
Phone	617-840-3570	email	george.giuntajr@needhamlaw.net

Representative is ☑Attorney; ☐Contractor; ☐Architect; ☐Other_____

Contact ☑Me ☑Representative in connection with this application.

Subject Property Information

Property Address	695 Highland Avenue		
Map/Parcel Number	Map 77 / Parcel 14	Zone of Property	Single Residence B (SRB)

Is property within 100 feet of wetlands, 200 feet of stream or in flood Plain?
☐Yes ☑No

Is property ☐Residential or ☑Commercial (property is zoned residential, but used for commercial purposes)

If residential renovation, will renovation constitute "new construction"?
☐Yes ☑No

If commercial, does the number of parking spaces meet the By-Law requirement? ☑Yes ☐No
Do the spaces meet design requirements? ☐Yes ☑ No

Application Type (*select one*): ☑Special Permit ☑Variance ☐Comprehensive Permit ☐Amendment ☐Appeal Building Inspector Decision

ZBA Application For Hearing

Existing Conditions: Commercial building used for bank purposes, built and used pursuant to Variance, dated October 14, 1969, issued to Mary W. Mack and Needham National Bank, as modified by Decision of the Board of Appeals, dated August 16, 2007, issued to Sovereign Bank.

Statement of Relief Sought:

1. Plan substitution and / or further relief relative to Variance, dated October 14, 1969, issued to Mary W. Mack and Needham National Bank, as modified by Decision of the Board of Appeals, dated August 16, 2007, issued to Sovereign Bank;
2. Special Permit pursuant to Section 5.1.1.5 waiving strict adherence with the off-street parking requirements of Section 5.1.3 (Parking Plan and Design Requirements); and
3. Any and all other relief necessary and appropriate to permit the alteration of the Premises as shown in the plans and materials submitted herewith; the modification of conditions in the aforesaid Variance, and the continued use of the Premises for bank purposes.

Applicable Section(s) of the Zoning By-Law:

3.2.1, 5.1.1.5, 5.1.2, 5.1.3, 7.5.2, 7.5.3 and any other applicable Section or By-Law.

If application under Zoning Section 1.4 above, list non-conformities:

	Existing Conditions	Proposed Conditions
Use		
# Dwelling Units		
Lot Area *(square feet)*		
Front Setback *(feet)*		
Rear Setback *(feet)*		
Left Setback *(feet)*		
Right Setback *(feet)*		
Frontage *(feet)*		
Lot Coverage *(%)*		
FAR *(Floor area divided by the lot area)*		

Numbers must match those on the certified plot plan and supporting materials

ZBA Application For Hearing

Date Structure Constructed including additions:	Date Lot was created:

Submission Materials	Provided
Certified Signed Plot Plan of Existing and Proposed Conditions *(Required)*	
Application Fee, check made payable to the Town of Needham Check holders name, address, and phone number to appear on check and in the Memo line state: "ZBA Fee – Address of Subject Property" *(Required)*	
If applicant is tenant, letter of authorization from owner *(Required)*	
Electronic submission of the complete application with attachments *(Required)*	
Elevations of Proposed Conditions *(when necessary)*	
Floor Plans of Proposed Conditions *(when necessary)*	

Feel free to attach any additional information relative to the application. Additional information may be requested by the Board at any time during the application or hearing process.

❖❖❖❖

I hereby request a hearing before the Needham Zoning Board of Appeals. I have reviewed the Board Rules and instructions.

I certify that ~~I have~~ the Applicant has consulted with the Building Inspector_____
date of consult

Date: October 25, 2024 Applicant Signature DEI Incorporated, George Giunta Jr
by its attorney,
George Giunta, Jr., Esq.

An application must be submitted to the Town Clerk's Office at townclerk@needhamma.gov and the ZBA Office at dcollins@needhamma.gov

TO: THE MEMBERS OF THE BOARD OF APPEALS
TOWN OF NEEDHAM, MA October 25, 2024

MEMORANDUM IN SUPPORT OF
APPLICATION OF
DEI INCORPORATED
695 Highland Avenue, Needham, MA

The applicant, DEI Incorporated (hereinafter, interchangeably, the "Applicant" and "DEI"), as representative of Dedham Savings Bank, has made application for plan substitution, alteration or removal of conditions, and further relief pursuant to Variance dated October 14, 1969, issued to Mary W. Mack and Needham National Bank, relative to the property known and numbered 695 Highland Avenue (hereinafter the "Premises"), Special Permit pursuant to Section 5.1.1.5 waiving strict adherence with the off-street parking requirements of Section 5.1.3 (Parking Plan and Design Requirements), as well as any and all other relief necessary and appropriate to permit the proposed alterations to the Premises and its continued use as a branch bank location.

PRESENT USE / HISTORY / EXISTING CONDITIONS

The Premises is shown as parcel 14 on sheet 77 of the Assessor's Map for the Town of Needham and is located in the Single Residence B Zoning District. It consists of approximately 15,688 square feet of land, with approximately 81.73 feet of total frontage on Highland Avenue, 166.52 feet of frontage on Webster Street and 92.06 feet of frontage on Putnam Street. It is currently accessed via Putnam Street and Webster Street and is occupied by a one-story bank building, constructed in 1970 pursuant to Building Permit No. 1544.[1] The existing building consists of approximately 2,208 square feet of space and includes a drive-up teller window.

The use of the Premises for a bank was authorized by Variance, dated October 14, 1969, issued to Mary W. Mack and Needham National Bank, as modified by Decision of the Board of Appeals, dated August 16, 2007, issued to Sovereign Bank for façade modifications.[2] Since construction of the building in 1970, it has been used continuously for banking purposes by a

[1] See Exhibit A attached hereto, building permit and plot plan.

series of different banks. Most recently, it was used and occupied as a Santander Bank branch bank, and before that as a Sovereign Bank branch bank. Santander closed the branch in 2023, leaving the Premises vacant.

PROPOSED USE / ACTIVITY

Dedham Savings Bank, which already has a branch location in Needham at 1077 Great Plain Avenue, desires and intends to use and occupy the Premises as an additional branch bank. In connection therewith, certain modifications and improvements are proposed, for the purpose of improving visual appeal, functionality and traffic flow. In particular, Dedham Savings Bank would like to demolish and rebuild the drive-up canopy, in the same location, but slightly larger[3]; add a new landscape island adjacent to the drive-up area; add a handicap space in front of the building; and reconfigure the driveway and parking on the side of the building (including the addition of new landscaping).

The proposed replacement canopy, which is set back 20 feet from Putnam Street, complies with dimensional and density requirements, as does the addition of the proposed new landscaping. As a bank, the applicable parking demand for the use of the Premises is one parking space for every 300 square feet of area. The building, at 2,208 square feet, therefore requires a total of 7.36, or 8 parking spaces, rounded up. Following the proposed modifications to the driveway and parking area on the side of the building, a total of 14 parking spaces, including a van accessible handicap space will exist on the property. As a result, there will be almost double the parking required. Moreover, while the parking lot is being reconfigured, all the changes are internal to the parking area, and do not affect the existing non-compliance with applicable off-street parking design requirements. Nevertheless, because the use of the Premises was authorized by variance, all these changes require additional review by the Board and the change to the parking will require the removal or modification of one of the original conditions to the variance.

In particular, the original variance included the following condition no. 4:

> Parking facilities for at least 17 cars, as shown on the plan, must be provided.

---

[2] Copies of both Decisions are provided herewith.

[3] The proposed replacement canopy is substantially the same width, but approximately 1.8 feet further out from the building than the existing canopy.

It is not entirely clear why this condition was included but considering the history of the area, the fact that the variance was issued prior to the adoption of off-street parking regulations, and that the original proposal was for a two-story building[4], a best guess would be concerns about sufficient parking and overspill into the residential neighborhood.

However, following the initial grant of the variance, in the 1980s, the Town adopted off-street parking regulations, including parking standards applicable to various categories of uses. One such category is "Offices, office buildings, and banks" with an applicable standard of one parking space for every 300 square feet of floor area. As indicated above, based on the size of the building, the total parking demand based on this standard is 7.36, or 8 parking spaces, rounded up. This is less than half of the 17 spaces required pursuant to the aforesaid condition no. 4. Furthermore, the building, as constructed, is only one-story as opposed to the two-story building originally contemplated. As a result, the Applicant requests that such condition either be stricken in its entirety, or, at a minimum, modified to require only 14 parking spaces, consistent with the proposed alterations.

In addition, in preparation for this filing it was noted that the original variance decision included the following condition no. 5:

> This variance is granted to the present petitioners and proposed user on a nontransferable basis, and for use of the property solely as a bank.

Following grant of the variance, in 1975, the applicable statute was modified and amended by St. 1975, c. 808, Section 3 to, among other things, specifically prohibit the imposition of "any condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner."[5] As a result, the portion of the above quoted condition no. 5 purporting to limit the variance to the then petitioner and proposed user is contrary to and in violation of current applicable law.[6] As a result, the Applicant

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[4] See the beginning of the third paragraph of the 1969 variance, which reads: "In showing the second page of the plans, Mr. Gordon stated that the bank intends to construct a 38' x 54' Colonial style *two-story* building . . ." (emphasis added).

[5] See current c40A, Section 10, which includes the following: "The permit granting authority may impose conditions, safeguards and limitations both of time and of use, including the continued existence of any particular structures *but excluding any condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner*" (emphasis added).

[6] See Huntington v. Zoning Bd. of Appeals of Hadley, 12 Mass. App. Ct. 710 (1981)

requests that such condition be modified and amended to remove the initial limiting clause so that it reads as follows: "This variance is granted for use of the property solely as a bank".

LAW

Massachusetts General Laws, Chapter 40A, Section 14 states, in pertinent part that "a board of appeals may, in conformity with the provisions of this chapter . . . modify any order or decision, and to that end shall have all the powers of the officer from whom the appeal is taken and may issue or direct the issuance of a permit."

Section 5.1.17 of the Zoning By-Laws, Applicability for Parking Area, states, in pertinent part, that ". . . the construction, enlargement, or alteration of a parking area containing 5 or more spaces shall adhere to all of the requirements of Section 5.1.3 Parking Plan and Design Requirements, unless strict adherence to the requirements of Section 5.1.3 is waived by a special permit granted by the Board of Appeals under the provisions of Subsection 5.1.1.5."

Section 5.1.1.5 authorizes and allows the Board to waive strict adherence with the requirements of Sections 5.1.2 and 5.1.3 where a particular use, structure or lot, owing to special circumstances, does not warrant the application of the parking requirements of Section 5.1.2 or the design requirements contained in Section 5.1.3. In addition, pursuant to Section 5.1.1.5 the Board is directed to consider whether the issuance of the special permit would be detrimental to the Town or to the general character and visual appearance of the surrounding neighborhood and abutting uses and is further consistent with the intent of the Zoning By-Law.

ANALYSIS / ARGUMENT

The use of the Premises as a bank was authorized by use variance, which, by law, runs with the land in perpetuity. Notwithstanding such perpetual application, pursuant to the By-Law, the use authorized by the variance technically does not constitute a lawful, pre-existing, non-conforming use. As a result, the standard test for alterations to non-conforming uses and structures does not apply. However, on multiple prior occasions, the Board has been confronted with similar situations relating to prior use variances.[7] While the specific language has differed, over the course of those cases the Board has applied substantially the same three-part test.

[7] See, for example, decisions relating to the following properties: 460 Central Avenue (2021), 114 Hillside Avenue (2016), 70-72 Marshall Street (2008), 695 Highland Avenue (2007), and 31 Wellesley Avenue (2003).

The first part of that test is whether the proposed change, alteration, expansion and reconstruction, as applicable, is consistent with and within the scope of the prior variance, or whether it would overburden the variance. Included in that analysis is whether the original variance was explicitly limited to or conditioned upon a particular plan. The second part of the test is whether the proposed change, alteration, expansion and reconstruction, as applicable, would increase or create and new non-conformities. And the third part of the test is whether the proposed change, alteration, expansion and reconstruction, as applicable, will be detrimental to the neighborhood and will be in harmony with the general purposes and intent of the By-law.

The Applicant asserts that the proposed alterations meet such test. The bank building is not being expanded or increased in any meaningful way, and its use for banking purposes will remain intact. Furthermore, the initial variance from 1969 did not approve, nor was tied to a specific plan, except with respect to condition no. 4, discussed above relative to parking. And with respect to such condition, the Applicant has requested that such condition be stricken or modified on account of change in circumstances and the subsequent establishment of applicable parking standards.

Furthermore, while the proposed replacement drive-up canopy is just under two feet further from the building than the existing canopy, it still meets all applicable dimensional and density regulations and will not increase the nature of the use. While the existing parking area does not comply with current design requirements, the proposed changes will not create or intensify any existing non-conformities. Finally, whereas the size and function of the building and the use of the Premises as a branch bank will remain the same, the Applicant asserts that the proposed alterations will not detrimental to the neighborhood and will be in harmony with the general purposes and intent of the By-law.

Following issuance of the variance in 1969, both the Zoning By-Law and Chapter 40A were modified and amended in ways directly relevant. The By-Law was amended to establish parking rules and regulations and Chapter 40A was amended to prohibit limitations on transferability and ownership of variances. In addition, there was a material change in circumstance in that the variance was granted based on a proposal for a two-story building. But what was constructed was only a one-story building.

Therefore, based on all the above, DEI asserts that the proposed changes are lawful changes that do not adversely affect or expand the use allowed by the 1969 variance; that the proposed alteration or removal of conditions no. 4 and no. 5 as set forth in the 1969 variance are lawful, based on changes in circumstance and applicable law; and that the proposed alterations are both appropriate and proper, and may be approved without substantial detriment to the public good and without nullifying or substantially deviating from the intent or purpose of the By-Law.

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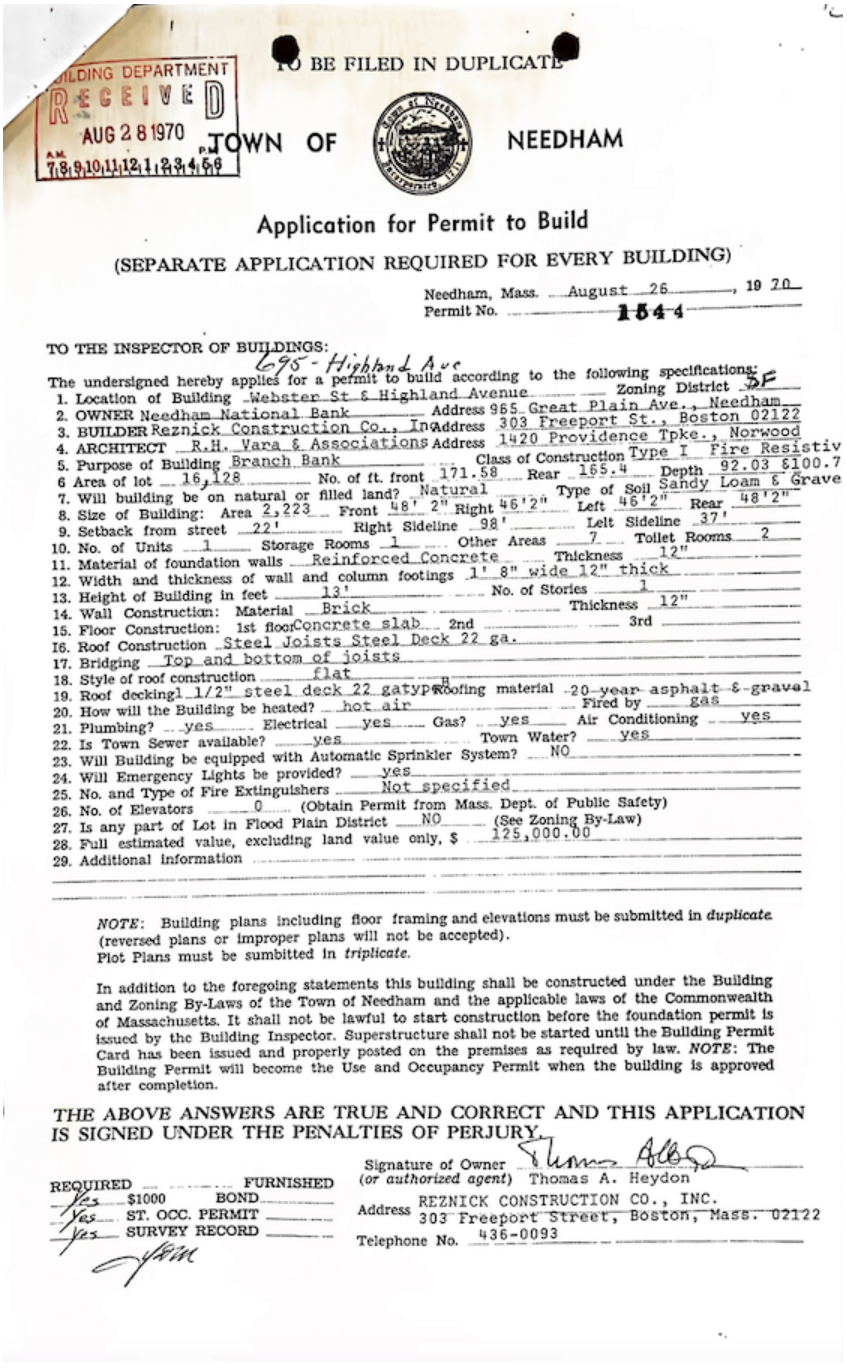
Respectfully submitted,
DEI Incorporated
by its attorney,

George Giunta, Jr., Esq.
281 Chestnut Street
Needham, Massachusetts 02492
617-840-3570
george.giuntajr@needhamlaw.net

EXHIBIT A
Building Permit and Plot Plan
Page 1 of 2



BUILDING DEPARTMENT
RECEIVED
AUG 28 1970
A.M. 7 8 9 10 11 12 1 2 3 4 5 6 P.M.

TO BE FILED IN DUPLICATE

TOWN OF NEEDHAM

Application for Permit to Build

(SEPARATE APPLICATION REQUIRED FOR EVERY BUILDING)

Needham, Mass. August 26, 19 70
Permit No. 1544

TO THE INSPECTOR OF BUILDINGS: 695 - Highland Ave

The undersigned hereby applies for a permit to build according to the following specifications:

1. Location of Building Webster St & Highland Avenue Zoning District SF
2. OWNER Needham National Bank Address 955 Great Plain Ave., Needham
3. BUILDER Reznick Construction Co., Inc Address 303 Freeport St., Boston 02122
4. ARCHITECT R.H. Vara & Associations Address 1420 Providence Tpke., Norwood
5. Purpose of Building Branch Bank Class of Construction Type I Fire Resistiv
6. Area of lot 16,128 No. of ft. front 171.58 Rear 165.4 Depth 92.03 &100.7
7. Will building be on natural or filled land? Natural Type of Soil Sandy Loam & Grave
8. Size of Building: Area 2,223 Front 46' 2" Right 46'2" Left 46'2" Rear 48'2"
9. Setback from street 22' Right Sideline 98' Left Sideline 37'
10. No. of Units 1 Storage Rooms 1 Other Areas 7 Toilet Rooms 2
11. Material of foundation walls Reinforced Concrete Thickness 12"
12. Width and thickness of wall and column footings 1' 8" wide 12" thick
13. Height of Building in feet 13' No. of Stories 1
14. Wall Construction: Material Brick Thickness 12"
15. Floor Construction: 1st floor Concrete slab 2nd 3rd
16. Roof Construction Steel Joists Steel Deck 22 ga.
17. Bridging Top and bottom of joists
18. Style of roof construction flat Roofing material 20-year asphalt & gravel
19. Roof decking 1 1/2" steel deck 22 gaty type B Fired by gas
20. How will the Building be heated? hot air Air Conditioning yes
21. Plumbing? yes Electrical yes Gas? yes Town Water? yes
22. Is Town Sewer available? yes
23. Will Building be equipped with Automatic Sprinkler System? NO
24. Will Emergency Lights be provided? yes
25. No. and Type of Fire Extinguishers Not specified
26. No. of Elevators 0 (Obtain Permit from Mass. Dept. of Public Safety)
27. Is any part of Lot in Flood Plain District NO (See Zoning By-Law)
28. Full estimated value, excluding land value only, $ 125,000.00
29. Additional information

NOTE: Building plans including floor framing and elevations must be submitted in *duplicate* (reversed plans or improper plans will not be accepted).
Plot Plans must be sumbitted in *triplicate*.

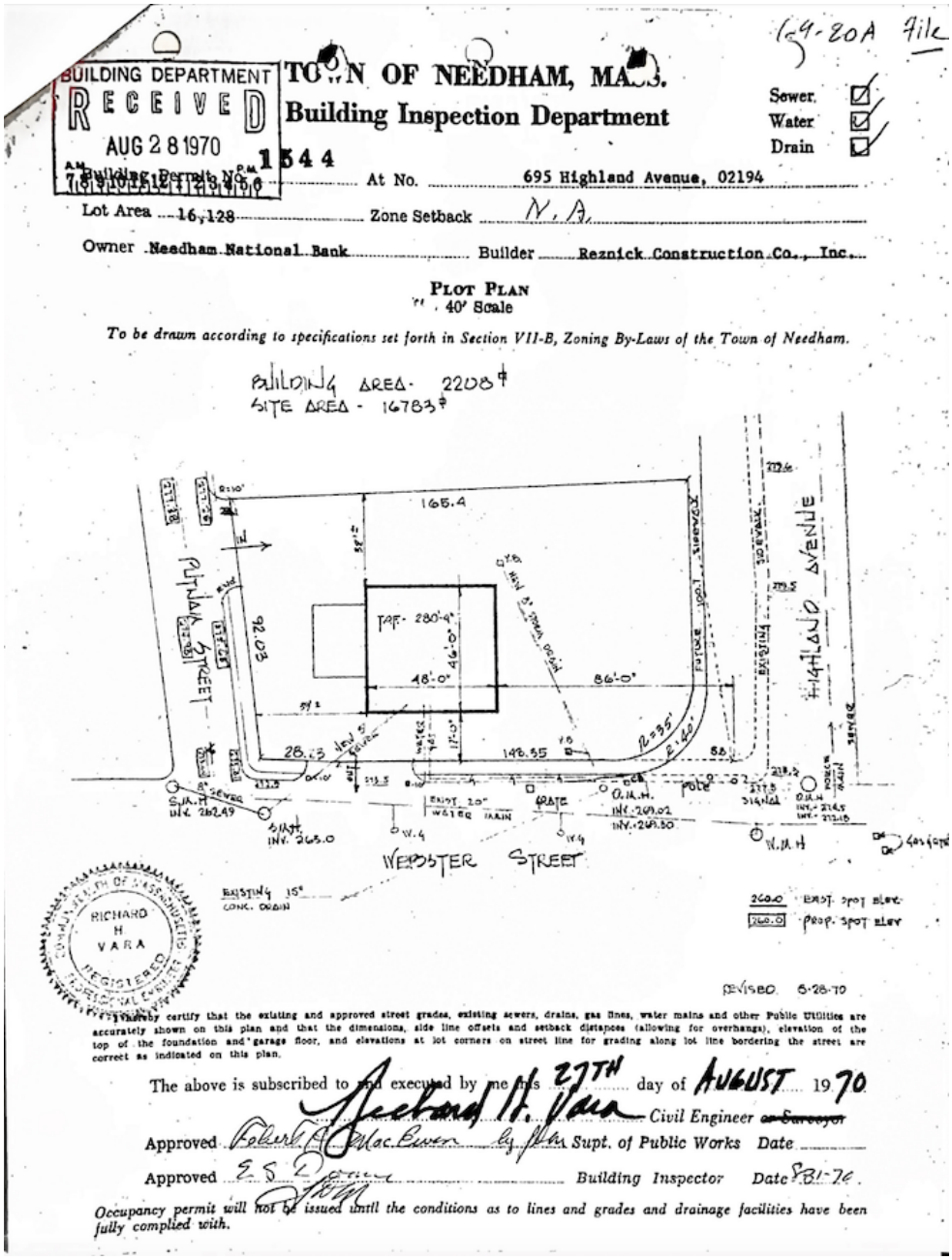
In addition to the foregoing statements this building shall be constructed under the Building and Zoning By-Laws of the Town of Needham and the applicable laws of the Commonwealth of Massachusetts. It shall not be lawful to start construction before the foundation permit is issued by the Building Inspector. Superstructure shall not be started until the Building Permit Card has been issued and properly posted on the premises as required by law. *NOTE*: The Building Permit will become the Use and Occupancy Permit when the building is approved after completion.

THE ABOVE ANSWERS ARE TRUE AND CORRECT AND THIS APPLICATION IS SIGNED UNDER THE PENALTIES OF PERJURY.

Signature of Owner Thomas A. Heydon
(*or authorized agent*) Thomas A. Heydon
Address REZNICK CONSTRUCTION CO., INC.
303 Freeport Street, Boston, Mass. 02122
Telephone No. 436-0093

REQUIRED		FURNISHED
Yes	$1000 BOND	
Yes	ST. OCC. PERMIT	
Yes	SURVEY RECORD	

EXHIBIT A
Building Permit and Plot Plan
Page 2 of 2



BUILDING DEPARTMENT RECEIVED AUG 28 1970

TOWN OF NEEDHAM, MASS.
Building Inspection Department

64-80A File

Sewer ☑ Water ☑ Drain ☑

Building Permit No. 1544 At No. 695 Highland Avenue, 02194

Lot Area 16,128 Zone Setback N. A.

Owner Needham National Bank Builder Reznick Construction Co., Inc.

PLOT PLAN
1" = 40' Scale

To be drawn according to specifications set forth in Section VII-B, Zoning By-Laws of the Town of Needham.

BUILDING AREA - 2208 ☐'
SITE AREA - 16783 ☐'

RICHARD H VARA REGISTERED PROFESSIONAL ENGINEER

REVISED 8-28-70

I hereby certify that the existing and approved street grades, existing sewers, drains, gas lines, water mains and other Public Utilities are accurately shown on this plan and that the dimensions, side line offsets and setback distances (allowing for overhangs), elevation of the top of the foundation and garage floor, and elevations at lot corners on street line for grading along lot line bordering the street are correct as indicated on this plan.

The above is subscribed to and executed by me this 27TH day of AUGUST 1970

Richard H. Vara Civil Engineer ~~or Surveyor~~

Approved Robert A. MacLean by [illegible] Supt. of Public Works Date

Approved [illegible] Building Inspector Date 8-31-70

Occupancy permit will not be issued until the conditions as to lines and grades and drainage facilities have been fully complied with.

693 HIGHLAND AVENUE Duplicate when Permit issued

RECEIVED
TOWN CLERK
NEEDHAM

1969 NOV 3 PM 4 09

TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS
OCTOBER 14, 1969

MARY W. MACK AND NEEDHAM NATIONAL BANK

Upon the application of Mary W. Mack, 693 Highland Avenue, Needham Heights, Mass., owner, and Needham National Bank, 965 Great Plain Avenue, Needham, prospective purchaser, to the Board of Appeals for a variance from Section VII D of the Zoning By-Laws, and/or any other applicable sections, to permit the construction of a building on the above-mentioned premises to be used as a bank, a public hearing was held at the Town Hall, Needham, Massachusetts, on Tuesday, October 14, 1969, in the evening, pursuant to notice thereof published in a local newspaper and mailed to all persons interested.

Atty. Meyer J. Gordon, 190 Great Plain Avenue, Needham, represented the petitioners and presented the Board with detailed plans of the proposed new structure for the Needham National Bank to be erected on the site, pointing out the number of neighboring businesses in operation, including The Pancake House, the data processing business in operation at 679 Highland Avenue in the Vincent J. Powers property, and the variance granted by the Board of Appeals to the abutting Snyder property at 687 Highland Avenue for the erection of an office building, and stating his feeling that it would be unrealistic to continue a single residence in this area, which would certainly create a hardship to the property owner.

In showing the second page of the plans, Mr. Gordon stated that the bank intends to construct a 38' x 54' Colonial style, two-story building, with an allowance for the parking of 15 cars, and that they have taken into consideration the 20' strip, together with some of the curve, which the State will take when that portion of Highland Avenue is reconstructed to contain a median strip.

TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS
NOTICE OF HEARING

Public notice is hereby given that Mary W. Mack, 693 Highland Avenue, Needham Heights, Massachusetts, owner, and Needham National Bank, 965 Great Plain Avenue, Needham, prospective purchaser, have made application to the Board of Appeals for a variance from Section VII D of the Zoning By-Laws and/or any other applicable sections, to permit the construction of a building on the above-mentioned premises to be used as a bank.

Upon said application, a public hearing will be held at the Town Hall, Needham, Massachusetts, on Tuesday, October 14, 1969 in the evening at 7:50 P.M., at which time and place all persons interested may appear and be heard.

W. Bigelow Hall, Chairman
Edward F. O'Brien
Alexander Prahodski
Stanley R. Tippett
Paul Dunn
Board of Appeals

(C) S-2-10-2

Mr. Gordon then quoted from the Board of Appeals decision of November 12, 1968, to Snyder Realty Inc., granting their request to construct an office building at 687 Highland Avenue, as follows, "We are in agreement with the Planning Board that the use currently permitted on this lot, i.e. single residence, is not realistic, and, in view of the character of the neighborhood, we believe there is a definite hardship in not permitting use of the entire property for business purposes, bearing in mind that a portion of the property is presently used for non-residential purposes." Mr. Gordon added that the Planning Board had proposed that this entire area be business zoned.

Present and speaking in opposition was Harding M. Ounanian, 277 Webster Street, Needham Heights.

Chairman Hall read into the record a letter dated Oct. 8, 1969, from the Planning Board, "The Planning Board is interested in the petition of Mary W. Mack, 693 Highland Avenue, Needham Heights, for the variance to permit a bank at the corner of Highland Avenue and Webster Street, because of the effect it may have on traffic and access, but in the absence of a plan we are unable to evaluate the proposal. We would, therefore, appreciate it if the Board of Appeals would not make a decision on this petition until October 21, to give us time to obtain and analyze the pertinent information. Your continued cooperation is appreciated."

Present and speaking in favor was Vincent J. Powers, owner of property at 679 Highland Avenue, Needham Heights.

The hearing adjourned at 8:35 P.M.

Subject to the hearing, a letter dated October 21, 1969, was received from the Planning Board, as follows, "The Planning Board has reviewed the plans for the proposed Needham National Bank branch office at Highland Avenue and Webster Street and wishes to submit the following comments for consideration by the Board of Appeals.

"1. The Town Meeting of 1968 rejected a Planning Board proposal for the rezoning of this area which would have permitted no retail uses and been subject to very stringent controls as to yards, parking, lot coverage, etc. The current proposal is one of a series gradually changing the character of the area and permitting a lot-by-lot rezoning by the Board of Appeals and often with substantially less strict dimensional control and parking requirements and with no provision for the construction of the needed access streets. This "domino" zoning is apt to eventually result in just what the Planning Board was trying to prevent - a problem area in which substantial Town funds will have to be spent for the relief of traffic congestion, drainage and access problems.

"2. Should the Board of Appeals decide that a use variance is justified in this instance, we recommend that this be granted only to the present petitioner and proposed user on a nontransferable basis. The Planning Board also strongly recommends that the access from Highland Avenue be not permitted, as it would create both grade and traffic problems and conflict with state plans for making this section of Highland Avenue limited access with a divider in the middle. When more than 5 or 6 cars, entering directly from Highland Avenue, attempt to use the drive-up window they will be backed up into Highland Avenue. Thus, not only would this interfere with the flow of traffic on Highland Avenue but it would create a dangerous traffic situation at this major intersection. We would thus recommend that Putnam Street, improved to Town standards be the sole means of access to the facility with an exit on Webster Street. This exit could not be made one way in and out since cars waiting to enter the facility from Webster Street would interfere with the left turning movements of fire apparatus leaving the fire station across the street. However, if the site were redesigned with in-out driveways located closer to Putnam Street, this problem might be avoided. Also, assuming the site is redesigned, the proposed entrance on Highland Avenue could, if there are no objections from the State Highway Department, be converted to an exit with right turn only.

"The Planning Board appreciates your courtesy in giving us an opportunity to study the plans and make our recommendations."

The property in question is the last remaining plot on the northwesterly side of Highland Avenue from Webster Street for a considerable distance toward Gould Street which is not devoted to business purposes. Thus we have conditions affecting this property but not affecting the zoning area in general, creating a hardship if the property is continued as residential property.

We do not believe that the proposed use of the property for banking purposes will be detrimental to the area, but, in fact, may be an asset, if proper limitations are imposed thereon.

We appreciate that banking use of the property will generate some increased traffic, but, in view of the present heavy traffic at the Highland Avenue, Webster Street intersection, we doubt that the increased traffic due to the presence of a bank will be significant, if restrictions as proposed by the Planning Board in its letter of October 21, 1969, to this Board are imposed, which letter has been made part of the record.

Accordingly, subject to the following restrictions, which we realize will cause some changes in the plans presented to the Board, the requested variance is granted, by unanimous vote of the Board:

1. There shall be no vehicular access to the property from Highland Avenue.

2. Subject to approval by the Planning Board, there may be both in and out driveways from Webster Street, located sufficiently close to Putnam Street so that there will be no interference with left turning movements of fire apparatus leaving the fire station across the street. This shall require a redesign of the site.

3. There may be an access from Putnam Street, if the street is improved to Town standards.

4. Parking facilities for at least 17 cars, as shown on the plan, must be provided.

5. This variance is granted to the present petitioners and proposed user on a nontransferable basis, and for use of the property solely as a bank.

W. Bigelow Hall, Chairman

Edward F. O'Brien, Member

Alexander Prohodski, Member

6-9-20A File

BUILDING DEPARTMENT
RECEIVED
AUG 28 1970
A.M. 7 8 9 10 11 12 1 2 3 4 5 6 P.M.

TOWN OF NEEDHAM, MASS.
Building Inspection Department

Sewer ☑
Water ☑
Drain ☑

Building Permit No. 1544 At No. 695 Highland Avenue, 02194

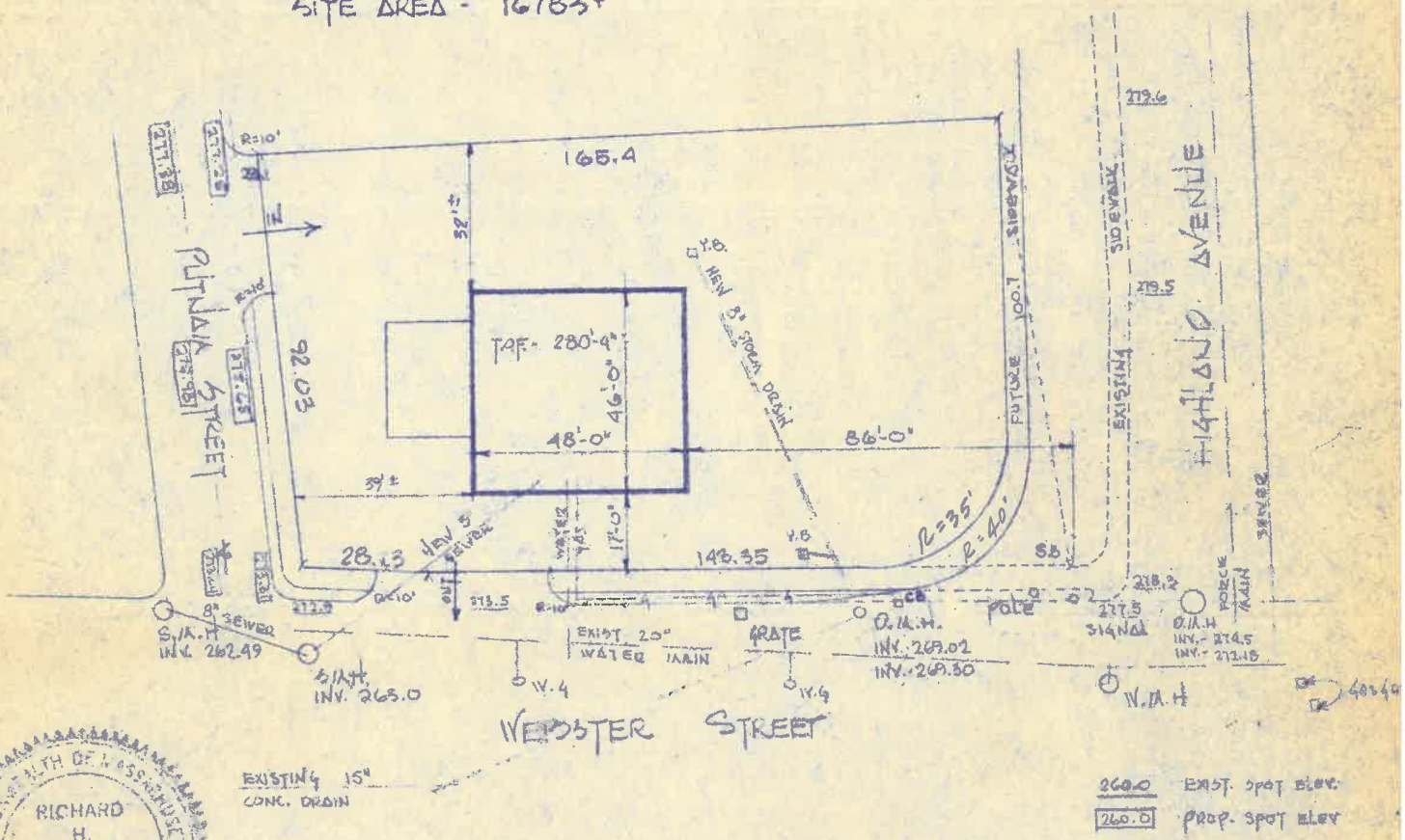
Lot Area 16,128 Zone Setback N. A.

Owner Needham National Bank Builder Reznick Construction Co., Inc.

PLOT PLAN
40' Scale

To be drawn according to specifications set forth in Section VII-B, Zoning By-Laws of the Town of Needham.

BUILDING AREA - 2208 ☐'
SITE AREA - 16783 ☐'



REVISED 8-28-70

RICHARD H. VARA
COMMONWEALTH OF MASSACHUSETTS
REGISTERED PROFESSIONAL ENGINEER

I hereby certify that the existing and approved street grades, existing sewers, drains, gas lines, water mains and other Public Utilities are accurately shown on this plan and that the dimensions, side line offsets and setback distances (allowing for overhangs), elevation of the top of the foundation and garage floor, and elevations at lot corners on street line for grading along lot line bordering the street are correct as indicated on this plan.

The above is subscribed to and executed by me this 27TH day of AUGUST 1970

Richard H. Vara Civil Engineer ~~or Surveyor~~

Approved Robert A. MacEwen by [illegible] Supt. of Public Works Date

Approved [illegible] Building Inspector Date 8-31-70

Occupancy permit will not be issued until the conditions as to lines and grades and drainage facilities have been fully complied with.

TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS
AUGUST 16, 2007

SOVEREIGN BANK

Upon the application of Soverign Bank, 695 Highland Avenue, Needham, MA, owner, to the Board of Appeals for a Special Permit to allow façade improvements under Section 1.4.6 of the By-law, in General Residence District at 695 Highland Avenue, a public hearing was held at the Needham Public Library, 1139 Highland Avenue, Needham, MA on Thursday, August 16, 2007, in the evening, pursuant to notice thereof published in a local newspaper and mailed to all parties in interest.

Filed with the application was a site plan prepared by Symmes Maini & Mckee Associates, 1000 Massachusetts Avenue, Cambridge, MA, dated August 13, 2007, a page of elevation drawings, existing building photos and proposed exterior renovations and signage

The Planning Board letter, dated August 15, 2007, page dated April 15, 2007, issued "No Comment" on the application. Appearing before the Board was Jennifer Roy of Symmes Maini & McKee, with John Daryl, facility manager. Ms Roy stated that the 695 Highland Avenue (the "Premises") is located in the general residence district, and was originally a house.

The Zoning Board of Appeals issued a variance on October 14, 1969 permitting construction of a building to be utilized as a bank. On November 21, 1972, the Board denied the request to modify or amend the previous decision.

Ms. Roy reviewed the proposed façade updates that the bank seeks to make, including a pyramid roof at the corner, metal panels, awnings and landscaping. The current guardrail at the driveway is proposed to be removed, and landscaping is proposed to be substituted. Ms. Roy stated that there will be no change made to the footprint. The height limit in the district is 35 feet, and the building is only approximately 26 feet tall.

Albert Rossi, 248 Webster Street, requested a trash receptacle at the ATM machine, to prevent paper slips from blowing onto his property. John Daryl agreed that this was a good idea.

The hearing closed at 9:05 p.m., and the Board proceeded to deliberate.

DECISION:

On the basis of the evidence presented at the hearing on the application by Sovereign Bank, 695 Highland Avenue, Needham, MA, owner (the "Applicant") for a Special Permit under sections 1.4.6 of the Zoning By-law to allow façade improvements in a General Residence District at 695 Highland Avenue, the Board makes the following findings:

1. The Premises consists of a bank with drive through ATM and associated parking and landscaping. The use as a bank and the building were approved by a variance granted by the Zoning board of Appeals by decision dated October 14, 1969.

2. The Applicant proposes changes to the façade of the structure including but not limited to replacing paneling with metal panels, adding metal pyramidal roof at corner, remove wood railings along Webster Street add awnings and rebuild the drive through structure in the rear. Landscaping and the addition of awnings are also proposed by Applicant.

3. None of the proposed changes will increase or create new non-conformities with applicable dimensional and set back requirements of the By-laws, and will not increase the use allowed by the variance, and are within the scope of the variance granted in 1969.

4. The Applicant will comply with all applicable sign by-laws and agrees to configure the drive through structure so that it will have appropriate trash receptacle(s) designed into the structure.

5. The proposed changes are not detrimental to the neighborhood and does not derogate from the intent and purpose of the Zoning By-law.

On the basis of the foregoing findings, in open session, and by unanimous vote after motion duly made and seconded, the Board finds that the changes, substantially, as shown on the site plan prepared by SMMA, dated 08/13/07 and the elevation plan entitled "PROPOSED EXTERIOR RENOVATIONS AND SIGNAGE" and the renderings, all submitted to the Board at the hearing are allowed as lawful changes to the structure and do not adversely affect or expand the use allowed by the 1969 Variance; subject to the condition that a trash receptacle is built into the ATM structure by the Applicant.

Michael A. Crowe, Chairman

Jon D. Schneider, Member

Jonathan D. Tamkin, Member

CATHARINE HUNTINGTON vs. ZONING BOARD OF APPEALS OF HADLEY & another. [Note 1]

12 Mass. App. Ct. 710

September 18, 1981 - December 4, 1981

Hampshire County

Present: GREANEY, PERRETTA, & SMITH, JJ.

In the circumstances, a zoning board of appeals did not exceed its authority in removing a condition imposed on a variance previously granted which purported to restrict the variance to the "lifetime" of the owner of the property and to prohibit the variance from being "transferred to anyone else." [715-721]

CIVIL ACTION commenced in the Superior Court on April 7, 1976.

The case was heard by Murphy, J.

Bradford R. Martin, Jr. (William E. Dwyer with him) for the plaintiff.

Leonard C. Jekanowski, Town Counsel, for Zoning Board of Appeals of Hadley.

GREANEY, J. The plaintiff, Catharine Huntington, brought this action in the Superior Court to review a decision of the Hadley zoning board of appeals (board). That decision granted the petition of Joseph F. Wanczyk (defendant) for the removal of a condition imposed on a variance previously granted to him which restricted the duration and transferability of the variance. The Superior Court affirmed the decision of the board. We affirm the judgment of the court.

The defendant owns twelve acres of land in Hadley. Since 1958, the defendant has used a portion of this land adjacent to Route 47 for the operation of a business which manufactures

Page 711

and sells precast concrete products. In 1961, the town adopted a zoning by-law which prohibited manufacturing in the district where the land is located. Following the adoption of the by-law, however, the defendant was allowed to continue his manufacturing operation as a nonconforming use. See G. L. c. 40A, Section 5, as in effect prior to St. 1975, c. 808, Section 3. See now G. L. c. 40A, Section 6.

Over the next twelve years, the defendant expanded his business substantially, constructing a new building and outfitting it with specialized heavy equipment at a total investment of approximately $170,000. In 1973, the defendant became concerned that the expansion of the business exceeded that permitted for a nonconforming use, and petitioned the board for a variance.

On May 18, 1973, the board granted the defendant a variance allowing the expanded use subject, however, to seven specific conditions enumerated in its decision. The condition in issue here (number 6) restricted the variance to Wanczyk's "lifetime" and it prohibited the variance from being "transferred to anyone else." The 1973 decision was not appealed, and all parties to this action concede the present validity of the variance and the validity of that condition at the time it was imposed. [Note 2]

In 1976, the defendant petitioned the board to remove condition number 6. Since Hadley had not then adopted G. L. c. 40A, as appearing in St. 1975, c. 808, Section 3 (hereinafter present c. 40A), as permitted by St. 1977, c. 829, Section 4, amending St. 1975, c. 808, Section 7, the decision on this petition was governed by the provisions of G. L. c. 40A, as in effect prior to St. 1975, c. 808, Section 3 (hereinafter former c. 40A). See Casasanta v. Zoning Bd. of Appeals of Milford, 377 Mass. 67, 71-73 & nn. 10, 11 (1979); Shalbey v. Board of Appeal of Norwood, 6 Mass. App. Ct. 521, 524-527 (1978).

Page 712

After notice, which the trial court held "proper," including notice to abutters, the board held a public hearing on the defendant's petition. See former G. L. c. 40A,

Sections 17-18 (now Sections 10-11). The board also viewed the defendant's property and found that the defendant had erected fences, as required by one of the conditions imposed on the 1973 variance, to prevent the manufacturing operation from being visible to abutters or to the public. Based on its view, the board made a general finding that the defendant was, in the words of the trial court, "in substantial compliance with all the conditions imposed" by the 1973 decision.

On March 15, 1976, the board granted the defendant's petition to remove condition number 6. In support of its action, the board stated that the termination of the variance on the defendant's death would cause substantial hardship because it would render his specialized manufacturing equipment useless, or virtually so, thus causing his investment to be lost to his estate. The decision also stated that even if a subsequent board were willing to grant a new variance for this use, the suspension of operations at the defendant's death would inevitably cause a period of uncertainty and lost income for the defendant's family, and that such needless hardship should be foreseen and avoided. The board concluded that "the continuation of all [the] other restrictions provides assurance that there will be no substantial detriment to the public good and that the intent and purpose of the by-law will continue to be met."

The plaintiff, Huntington, is the owner of land abutting the south side of the defendant's property. Located on her land is a building known as the Huntington House, which is an historic structure visited by tourists. The plaintiff, who lives in Boston, opposed the 1973 petition for the variance by means of a letter to the board, which was read at the public hearing. The grounds of her opposition do not appear in the record, nor does it appear whether she stated any opposition to the 1976 petition. It does appear, however, that the board's primary ground of concern in both proceedings was the visibility of the defendant's operation

to visitors to the Huntington House and to the public traveling on Route 47.

Following the board's decision on the 1976 petition, the plaintiff brought this action against the defendant and the board, alleging that the board exceeded its

authority in removing the condition because the requirements for a new variance had not been met. See former G. L. c. 40A, Section 15 (see now Section 10). She did not testify at the hearing in the Superior Court. The trial court found for the defendants, holding that each of the three statutory prerequisites had been met. The court also noted, however, that "as a practical matter" the 1976 decision did not really amount to a grant of a new variance, but rather involved a "modification of an existing variance which had been in effect for . . . [nearly] three years."

The plaintiff rejects the suggestion that the board's action constituted merely a "modification" of the original variance, arguing that the board could properly have removed the condition only upon satisfaction of the requirements for a new variance contained in former G. L. c. 40A, Section 15. The plaintiff argues further that it was the defendant's burden to make such a showing, Warren v. Board of Appeals of Amherst, 383 Mass. 1, 10 (1981), and cases cited, and that the board and the court both erred in ruling that the statutory requirements had been met here, see Raia v. Board of Appeals of No. Reading, 4 Mass. App. Ct. 318, 321 (1976).

In our view, it is unnecessary to consider whether the removal of the condition required the same showing necessary for the grant of a new variance. [Note 3] Nor is it necessary to

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hold that a local zoning board possesses a broad general power to modify substantive conditions attached to an existing variance. [Note 4] Rather, we think that the board's power to

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remove the condition here is most appropriately analyzed in terms of the nature and effect of the condition itself and in light of the statutory concerns relevant to the grant of a variance.

We look first to the statute. Under the former Section 15, the critical factual showing required for a variance was that of unique hardship, i.e., "substantial

hardship" which was created by "conditions especially affecting *such parcel or such building* but not affecting generally the zoning district in which it is located" (emphasis supplied). The exception made available by this statute was a narrow one. At its root is a concern that the grant of a variance be based only upon circumstances which directly affect the real estate and not upon circumstances which cause personal hardship to the owner. "The criteria in the act . . . relate to the land, not . . . [to] the applicant." Dowd v. Board of Appeals of Dover, 5 Mass. App. Ct. 148, 156 (1977) (special permit case). The decisions cited previously (see note 3, supra) have made this differentiation quite clear by consistently overturning grants of variances predicated only on a showing of personal hardship. The present Section 10 continues this emphasis on the land itself and makes the concept even more restrictive by specifying that the special circumstances justifying the grant of a variance must relate to "the soil conditions, shape, or topography" of such land or structures.

In contrast, the condition in issue here bears no relation to any circumstance which affects the underlying real estate. Nor is it aimed at the nature, character, or extent of the use

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permitted of the estate. [Note 5] Rather, it serves only to limit the duration of the variance itself by tying it to the lifetime and ownership of a particular individual. We view this as inconsistent with the explicit statutory emphasis on the real estate and its use as the basis of the board's inquiry. In effect, such a condition "injects criteria not found in the enabling act." Dowd v. Board of Appeals of Dover, 5 Mass. App. Ct. at 156. We further view it as inconsistent with the generally accepted principle that "a variance applies to the land rather than to its current owner, and . . . runs with the land when it is conveyed to [another] person." 3 Anderson, American Law of Zoning Section 18.64, at 311 & cases cited at n.24 (2d ed. 1977). See 3 Rathkopf, Zoning and Planning Section 38.06[1], at 38-61, and cases cited at nn. 2, 4 and Section 40.02, at 40-2 -- 40-3, and cases cited at n.2 (4th ed. 1981); 6 Rohan, Zoning and Land Use Controls Section 43.02[1], and cases cited at n.15 (1981); 5 Williams, American Land Planning Law: Land Use and the Police Power Section 133.02 (1975). See

also Dowd v. Board of Appeals of Dover, supra. Cf. Colonial Acres, Inc. v. North Reading, 3 Mass. App. Ct. 384, 385 (1975).

Personal conditions of the sort presented here are held in disfavor in other jurisdictions. See Fox v. Shriver-Allison Co., 28 Ohio App. 2d 175, 181-182 (1971); 3 Anderson, American Law of Zoning Section 18.69, at 323-324; Strine, The Use of Conditions in Land Use Control, 67 Dick. L. Rev. 109, 133 (1963); Note, Zoning Amendments and Variances Subject to Conditions, 12 Syracuse L. Rev. 230, 237 (1960). See also Dexter v. Town Bd. of Gates, 36 N.Y. 2d 102, 105-106 (1975). As aptly expressed by Chief Justice Kenison in

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Vlahos Realty Co. v. Little Boar's Head Dist., 101 N.H. 460, 463-464 (1958), such restrictions are inappropriate because they "place the emphasis on the regulation of the person rather than the land, and tend to make [a variance] an ad hominem privilege rather than a decision regulating the use of property." In the only Massachusetts case which has addressed the question, the court was inclined to the view that such a condition may be invalid when imposed on a variance. See Todd v. Board of Appeals of Yarmouth, 337 Mass. 162, 169 (1958). [Note 6]

The Legislature has recently made a clear policy judgment rejecting the attachment of such a condition to the grant of a variance. The present Section 10, as appearing in St. 1975, c. 808, Section 3, contains new language which specifically prohibits the imposition of "any condition, safeguards or limitation based upon the continued ownership of the land or structures to which the variance pertains by the applicant, petitioner or any owner." While this section also includes general language retained from the former Section 15, which allowed the board to impose "limitations both of time and of use," it is not clear to us that this language was ever intended to sanction a condition of the sort presented

Page 718

here, and the available evidence tends to indicate that it was not. The legislative

history of the present G. L. c. 40A, for example, states that the quoted prohibition was inserted in Section 10 for the purpose of eliminating "the practice of some local boards of appeals to condition the grant of a variance on the continued ownership of property by a particular person," which practice was deemed "improper, considering that hardship must be unique to the land or building and not merely to an individual." 1973 House Doc. No. 6200, at 20. See 1972 House Doc. No. 5009, at 66.

Despite the parties' assumption that condition no. 6 was valid under the former Section 15 when imposed, two conclusions now become apparent: (1) the validity of a condition tying the duration of a variance to ownership by a particular person was questionable even under the former statute, in light of the statute's emphatic focus on the land and its use, and in light of the general disfavor in which such conditions are held; and (2) this condition could not now be imposed under the present Section 10, because of that statute's express judgment that such conditions are to be prohibited.

To these conclusions we add the evidence at the hearing in the Superior Court which suggests that the board's decision to impose the condition rested on factors unrelated to the land's use or the operative criteria in Section 15. That evidence shows that the board's concerns in 1973 about the visibility of the business had been substantially satisfied in 1976 by the defendant's erection of fences in compliance with one of the conditions imposed, [Note 7] and that the defendant had substantially complied with the other conditions of the

Page 719

variance, all of which the board continued in effect. [Note 8] Moreover, there was testimony by the chairman of the board that condition no. 6 was originally imposed as an additional safeguard to ensure that the manufacturing use would not be continued unless the defendant brought a new petition to remove it, which would necessitate a new public hearing at which the defendant's compliance with the other restrictions would be scrutinized. This testimony suggests that the condition was not intended to be appurtenant to the land, and that the board, in fact, contemplated future relief from its effect if the other

restrictions, which did bear directly on the land, were satisfied.

In view of the evidence and for the reasons stated, it makes little sense in this case to force the owner and the board on to the horns of a dilemma. On the one hand, the owner should not be compelled to undertake the virtually impossible burden of proving the Section 15 criteria for a new variance before he can obtain redress. On the other hand, the board should not be forced, if it is inclined to give relief, to bend the theory underlying a variance in the search for a proper solution. We hold that the condition was essentially a personal one which the board could subsequently delete in the exercise of its sound "administrative discretion" (see Pendergast v. Board of Appeals of Barnstable, 331 Mass. 555, 558-559 [1954]; cf. Ranney v. Board of Appeals of Nantucket, 11 Mass. App. Ct. 112, 115-116 [1981]), and we turn to the question whether the board's exercise of its discretion was justified.

In the exercise of its discretion, the board could properly take into account the change effected with respect to such

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conditions by the present Section 10, and the fact that the other conditions, which ran with the land to bind subsequent owners, would continue to regulate the scope of the use. The board could properly consider the defendant's testimony that if the condition were not removed, the business would be lost as a livelihood to his family and the specialized equipment would have to be sold at auction "for 10% of its value," and his further unrebutted testimony that, although the work building might be used for another purpose, the property is unsuitable for farming or for building lots and that the loss of income caused by the operation of the condition might require his family to sell the land following his death.

As to the plaintiff's interest, it may be that she chose not to appeal the original grant of the variance because she felt she could endure a use limited to the defendant's lifetime or his ownership of the property. Although the existence of such an expectation would not preclude the board from removing the condition, it would, if demonstrated, be entitled to consideration. See and contrast Day v.

Zoning Bd. of Review of Cranston, 92 R.I. 136, 139-140 (1961) (quashing decision of board which removed a condition, on ground that abutters had withdrawn objections to the original grant of the variance in reliance on such restriction). Cf. Shuman v. Aldermen of Newton, 361 Mass. 758, 764 (1972). See generally Note, Indiana Variance Proceedings and the Application of Res Judicata, 46 Ind. L.J. 286, 289-290 (1971). Here, however, it has not been shown that the board failed to consider any legitimate expectations which the plaintiff might have harbored, or that it accorded her interest little or no weight. Beyond that point, the record does not specify the grounds of the plaintiff's opposition to the 1973 petition, and the plaintiff did not appear before the board or the court in 1976 to express her reliance on the condition, or to articulate what harm she might incur from its removal.

Finally, the board found, on the evidence before it, that the use as restricted by the remaining conditions could continue

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beyond Wanczyk's ownership of the land without any "substantial detriment to the public good." See former Section 15 (now Section 10). That finding, added to the other considerations previously discussed, indicates that removal of the condition is in conformity with the goal that the zoning law be applied to further, not hinder, the stabilization of land use. See Kane v. Board of Appeals of Medford, 273 Mass. 97, 104 (1930); Yaro v. Board of Appeals of Newburyport, 10 Mass. App. Ct. 587, 589-590 (1980). We conclude that the board's decision to delete the condition was proper.

Judgment affirmed.

FOOTNOTES

[Note 1] Joseph F. Wanczyk, Jr.

[Note 2] Wanczyk does not argue that the board lacked power to impose the condition under former G. L. c. 40A, Section 15, as amended through St. 1958, c. 381.

[Note 3] The plaintiff is correct that if the board's action were deemed to require such a showing, it could not be sustained here. First, the board failed to make one of the "specific findings necessary" to justify the granting of a variance under former Section 15. Wolfson v. Sun Oil Co., 357 Mass. 87, 89 (1970). See McNeely v. Board of Appeal of Boston, 358 Mass. 94, 103 (1970). Cf. present G. L. c. 40A, Section 10. Although the board determined that the condition constituted a "hardship" to the defendant, it failed to find any facts which demonstrate that such hardship derived from circumstances "especially affecting" the land or buildings, as required by former Section 15, as amended through St. 1958, c. 381. The absence of such factual findings would leave the board's decision "invalid on its face." Warren v. Board of Appeals of Amherst, supra at 10. Likewise, the trial court's failure to find such facts would render its holding of special hardship "a bare recital of the statutory conditions" which is insufficient to support the granting of a variance. Id., quoting from McNeely v. Board of Appeal of Boston, supra.

Second, unique hardship could not properly be found on the facts presented here. See, e.g., Bicknell Realty Co. v. Board of Appeal of Boston, 330 Mass. 676, 680 (1953); Warren v. Board of Appeals of Amherst, supra at 11; Raia v. Board of Appeals of No. Reading, 4 Mass. App. Ct. at 321-322; Planning Bd. of Watertown v. Board of Appeals of Watertown, 5 Mass. App. Ct. 833 (1977). Contrast Dion v. Board of Appeals of Waltham, 344 Mass. 547, 551-552 (1962); Sherman v. Board of Appeals of Worcester, 354 Mass. 133, 135-136 (1968). The hardship in this case does not arise out of any circumstance "especially affecting" the land or buildings, as construed in the decisions above, but rather arises out of circumstances which are "personal" to the defendant. Barnhart v. Board of Appeals of Scituate, 343 Mass. 455, 458 (1962). Abbott v. Appleton Nursing Home, Inc., 355 Mass. 217, 221 (1969).

[Note 4] The former Section 15 is silent with respect to the modification of a variance. Although the former Section 19 contained a reference to the board's power to "modify any order or decision," this court has expressed the opinion that such language was "intended to apply to a case in which a board of appeals acts as an appellate tribunal in an appeal taken under [former] G. L. c. 40A, Sections 13 and 15(1)." Potter v. Board of Appeals of Mansfield, 1 Mass. App. Ct. 89, 95 n.8 (1973). Cf. Smith v. Building Commr. of Brookline, 367 Mass. 765, 772-774 (1975).

Most of the cases relevant to the question of the board's power of modification involve special permits rather than variances. Two propositions are established. First, it is clear that a board has "inherent power . . . to correct an inadvertent or clerical error in its decision so that the record reflects its true intention." Selectmen of Stockbridge v. Monument Inn, Inc., 8 Mass. App. Ct. 158, 164 (1979). Dion v. Board of Appeals of Waltham, 344 Mass. at 553. Burwick v. Zoning Bd. of Appeals of Worcester, 1 Mass. App. Ct. 739, 742 (1974). See also Goldman v. Planning Bd. of

Burlington, 347 Mass. 320, 324-325 (1964). Second, the board may not make a substantive amendment which changes the result of an original deliberate decision, or which grants relief different from that originally granted, without compliance with the relevant notice and hearing requirements. That is not the case here. See Fish v. Building Inspector of Falmouth, 357 Mass. 774, 775 (1970); Potter v. Board of Appeals of Mansfield, 1 Mass. App. Ct. at 95-97. See also Cassani v. Planning Bd. of Hull, 1 Mass. App. Ct. 451, 456 (1973); Vitale v. Planning Bd. of Newburyport, 10 Mass. App. Ct. 483, 487 (1980).

For other authorities dealing with the question whether a board possesses an inherent power to make substantive modifications of prior decisions, see 6 Rohan, Zoning and Land Use Controls Section 43.03(3), at 43-44 (1981); 3 Anderson, American Law of Zoning Section 18.65, at 313 (2d ed. 1977). See also Cohen v. Fair Lawn, 85 N.J. Super. 234, 237 (1964); Springsteel v. West Orange, 149 N.J. Super. 107, 112-113 (1977); Note, Indiana Variance Proceedings and the Application of Res Judicata, 46 Ind. L.J. 286, 291 (1971).

[Note 5] Since the original grant of the variance was never appealed, we are bound to presume that the board properly found each of the specific criteria required by the former Section 15, including the element of hardship arising from "conditions especially affecting [the] parcel . . . but not affecting generally the zoning district in which it is located," and that the use allowed by the variance itself is valid. See LaCharite v. Board of Appeals of Lawrence, 327 Mass. 417, 421 (1951); Ploski v. Zoning Bd. of Appeals of Somerset, 7 Mass. App. Ct. 874, 875 (1979).

[Note 6] In the Todd case, which dealt with the validity of a special permit, the court upheld a condition which provided that the permit "runs only to the applicant." However, in addressing the argument that this condition was "invalid because primarily related to ownership of property, rather than its use," the court suggested in dictum that this "contention may have more force in respect of a variance under [former] Section 15, cl. 3, than of a permit under [former] Section 15, cl. 2. See Olevson v. Zoning Bd. of Review of Narragansett, 71 R.I. 303 [,307-308 (1945)]; Soho Park & Land Co. v. Board of Adjustment of Belleville, 6 Misc. (N.J.) 686 [(1928)]." Id.

We note that such conditions have continued to be upheld with respect to special permits. See Maki v. Yarmouth, 340 Mass. 207, 212-213 (1960); Shuman v. Board of Aldermen of Newton, 361 Mass. 758, 766-767 & n.11 (1972). It has also been noted, however, that the Shuman case, supra, "holds merely that the grant of a special permit may be limited to a particular `applicant.' But the considerations on which the grant is based still relate to the land rather than the applicant. An analogous distinction is found in the criteria for the grant of a variance." Dowd v. Board of Appeals of Dover, 5 Mass. App. Ct. at 156.

[Note 7] That condition required that such fences be six feet high, "of solid construction such that one cannot see through them," and that they be placed along the south side of the defendant's work area (facing the Huntington House) as well as the north side (facing another abutter). It appears that the view from Route 47 on the east was already substantially blocked by the defendant's work building. We therefore infer that the erection of these fences left the operation visible only from the river on the west side of the property, as to which the defendant was required to construct a fence "of any material."

[Note 8] These restrictions limited the nature of the manufacturing processes allowed, limited the operation to a prescribed work area, and provided that an existing barn may be used only for storage. They also prohibited the defendant from constructing any new buildings or subdividing the land. The defendant's 1976 petition sought to remove the latter restriction as well as the durational condition, but the board denied that request. These restrictions are plainly proper since they were limitations which directly affected the use and therefore ran with the land.

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August 26, 2024

All Massachusetts Reviewing Jurisdictions & Municipalities
Including but not limited to the Town of Needham
(required to receive approvals, authorizations to proceed and building permits)

To Whom it May Concern:

This letter serves as authorization for Jennifer King of DEI Incorporated and/or Richard Ladrick of RSL Commercial Architecture, on behalf of the Barchester Corporation, to act as our representative/agent in all building, planning and zoning requirements as it relates to our property located at 695 Highland Avenue, Needham, MA 02492.

Sincerely,

Joseph Seravalli

Joseph Seravalli
The Barchester Corporation
3234 Riverview Lane
Daytona Beach, FL 32118

STATE OF Florida
Volusia COUNTY

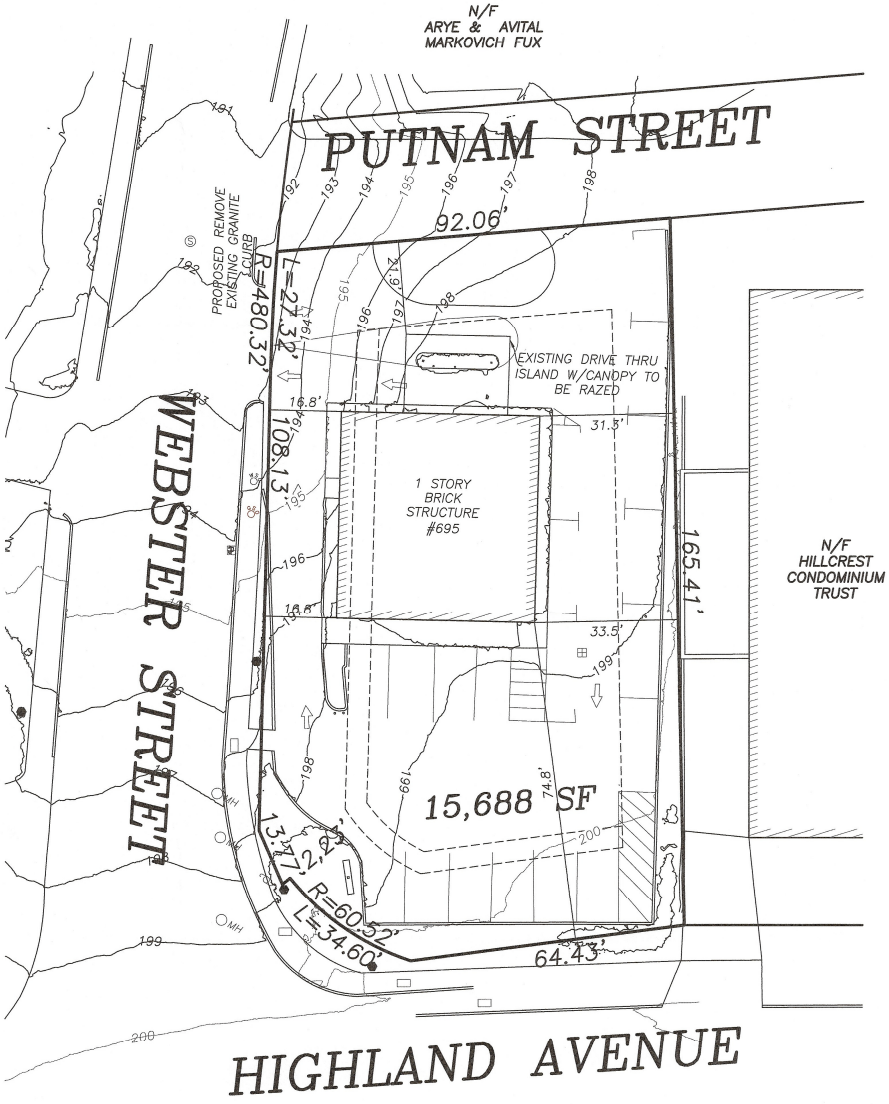
BEFORE ME, the undersigned authority, on this day personally appeared Joseph Seravalli, known to me to be the person who signed the above letter.

Given under my hand and seal of office

On this 20th date of August, 2024

Jayme Harvey
Notary Public

JAYME HARVEY
MY COMMISSION EXPIRES
06-22-2025
NOTARY
PUBLIC
COMM. # HH 103191
STATE OF FLORIDA



1) ELEVATIONS REFER TO PROJECT DATUM

2) CONTOUR INTERVAL EQUALS ONE (1) FOOT.

3) SITE PLAN INFORMATION PROVIDED BY RSL COMMERCIAL ARCHITECTURE.

PARKING SPACE SUMMARY:

19 SPACES

ZONING INFORMATION: GENERAL RESIDENCE

	REQUIRED	EXISTING
MINIMUM LOT AREA	10,000 SF	15,688 SF.
MINIMUM LOT FRONTAGE	80 FEET	342.54 FEET
MINIMUM FRONT SETBACK	20 FEET	74.8 FEET (HIGHLAND) 16.8 FEET (WEBSTER) 21.9 FEET (PUTNAM)
MINIMUM SIDE SETBACK	14.0 FEET	31.3' FEET
MAXIMUM FLOOR AREA RATIO	0.36	0.14
MAXIMUM BUILDING HEIGHT	35 FEET	14± FEET
MAXIMUM BUILDING HEIGHT	2 1/2 STORIES	1 STORY

I CERTIFY THAT THE PARCEL SHOWN HEREON LIES WITHIN A ZONE "X", AREAS OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN. AS SHOWN ON THE FLOOD INSURANCE RATE MAP FOR THE TOWN OF NEEDHAM, MASSACHUSETTS, COMMUNITY PANEL NO. 255215 0036 E, MAP NUMBER 25021C 0036 E EFFECTIVE DATE: JULY 17, 2012.

COMMONWEALTH OF MASSACHUSETTS
BRADLEY J. SIMONELLI
#47561
PROFESSIONAL LAND SURVEYOR

BRADLEY J. SIMONELLI ~ P.L.S.

DATE: OCTOBER 15, 2024

ZONING BOARD OF APPEALS
SITE PLAN SHOWING EXISTING CONDITIONS
695 HIGHLAND AVENUE
NEEDHAM, MASS.

PROPERTY REFERENCE

BOOK 14320 PAGE 211
PLAN IN BOOK 729 PAGE 640B

ZONING REFERENCE

ASSESSORS MAP 77, PARCEL 14
ZONING DISTRICT: GENERAL RESIDENCE

GRAPHIC SCALE
20 0 10 20 40

094-24

JOB NO. 094-24

REVISED:

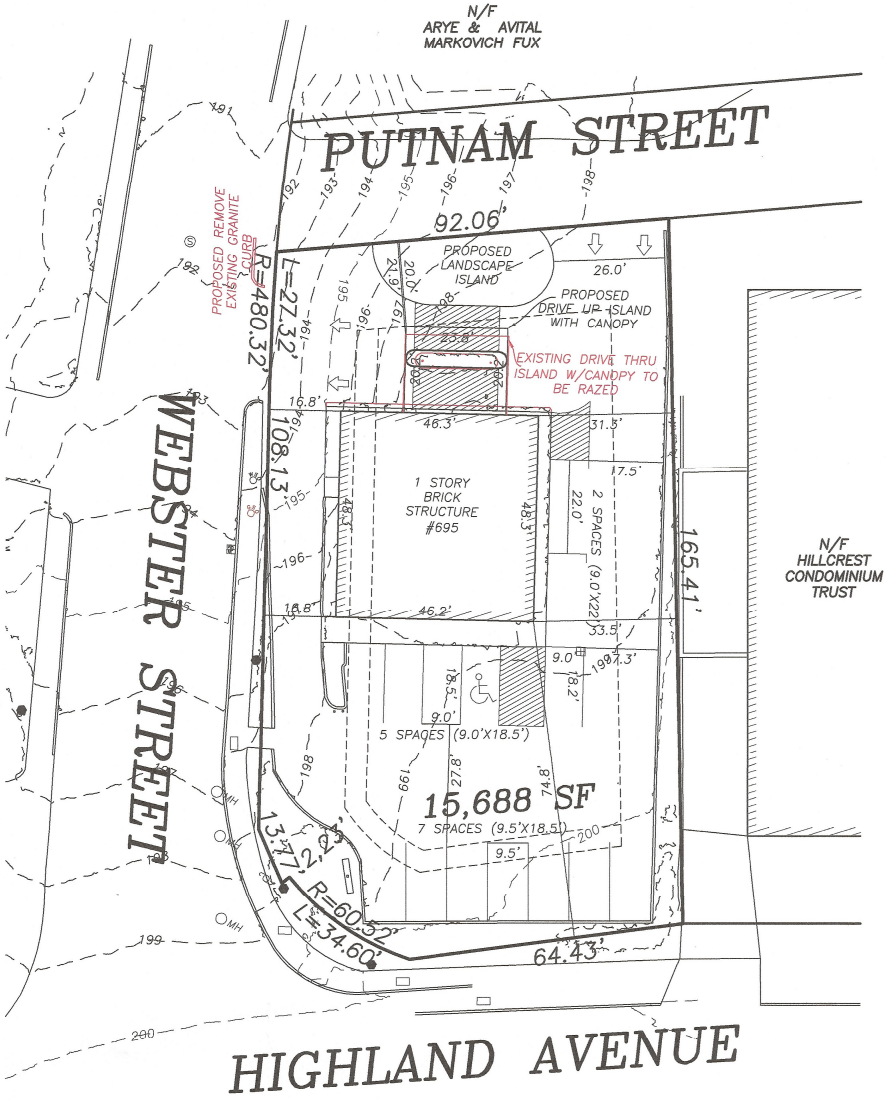
Field Resources, Inc.
LAND SURVEYORS

OCTOBER 15, 2024 SCALE 1"=20'

P.O. BOX 324
AUBURN, MA
508 832 4332

281 CHESTNUT ST.
NEEDHAM, MA.
781 444 5936

office@fieldresources.net



1) ELEVATIONS REFER TO PROJECT DATUM

2) CONTOUR INTERVAL EQUALS ONE (1) FOOT.

3) SITE PLAN INFORMATION PROVIDED BY RSL COMMERCIAL ARCHITECTURE.

PARKING SPACE SUMMARY:

13 SPACES
1 HANDICAP SPACE

ZONING INFORMATION: GENERAL RESIDENCE

	REQUIRED	PROPOSED
MINIMUM LOT AREA	10,000 SF	15,688 SF.
MINIMUM LOT FRONTAGE	80 FEET	342.54 FEET
MINIMUM FRONT SETBACK	20 FEET	74.8 FEET (HIGHLAND) 16.8 FEET (WEBSTER) 20.0 FEET (PUTNAM)
MINIMUM SIDE SETBACK	14.0 FEET	31.3' FEET
MAXIMUM FLOOR AREA RATIO	0.36	0.14
MAXIMUM BUILDING HEIGHT	35 FEET	14± FEET
MAXIMUM BUILDING HEIGHT	2 1/2 STORIES	1 STORY

I CERTIFY THAT THE PARCEL SHOWN HEREON LIES WITHIN A ZONE "X", AREAS OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN. AS SHOWN ON THE FLOOD INSURANCE RATE MAP FOR THE TOWN OF NEEDHAM, MASSACHUSETTS, COMMUNITY PANEL NO. 255215 0036 E, MAP NUMBER 25021C 0036 E EFFECTIVE DATE: JULY 17, 2012.

COMMONWEALTH OF MASSACHUSETTS
BRADLEY SIMONELLI #47581 REGISTERED PROFESSIONAL LAND SURVEYOR

BRADLEY J. SIMONELLI ~ P.L.S.

DATE: OCTOBER 15, 2024

ZONING BOARD OF APPEALS
SITE PLAN SHOWING PROPOSED
695 HIGHLAND AVENUE
NEEDHAM, MASS.

PROPERTY REFERENCE

BOOK 14320 PAGE 211
PLAN IN BOOK 729 PAGE 640B

ZONING REFERENCE

ASSESSORS MAP 77, PARCEL 14
ZONING DISTRICT: GENERAL RESIDENCE

GRAPHIC SCALE
20 0 10 20 40

094-24

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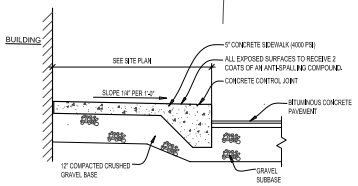

4 SIDEWALK DETAIL
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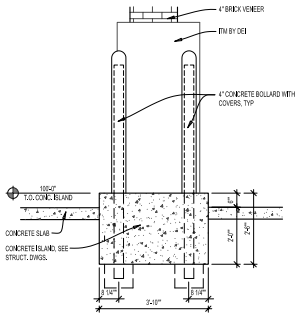

3 SECTION at CONCRETE ISLAND
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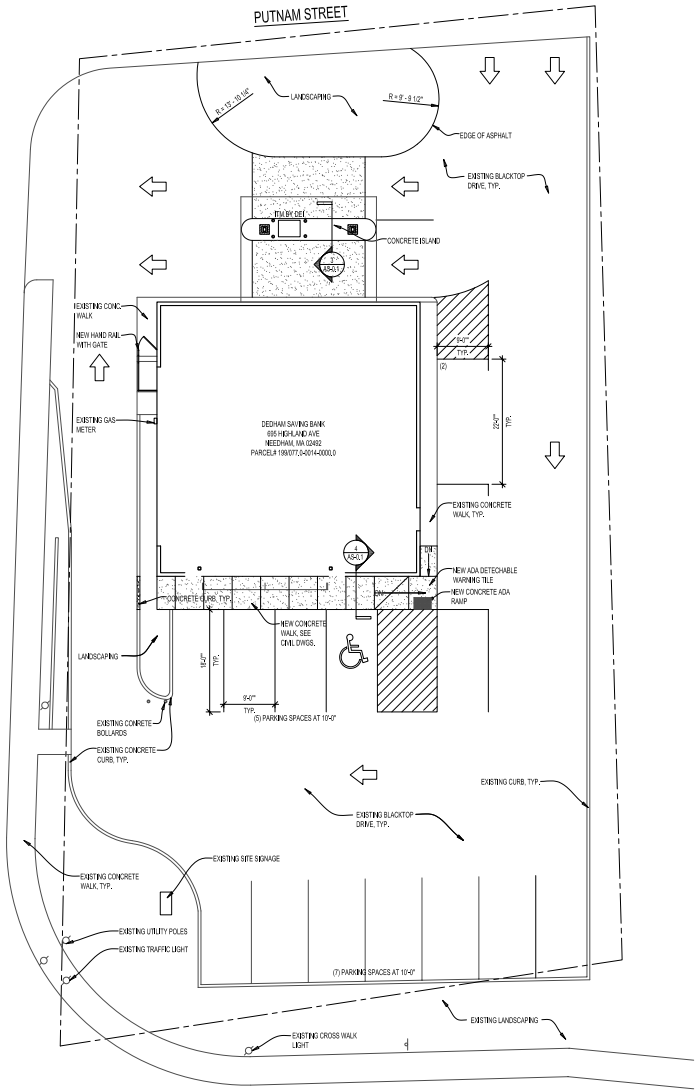

2 ARCHITECTURAL SITE PLAN
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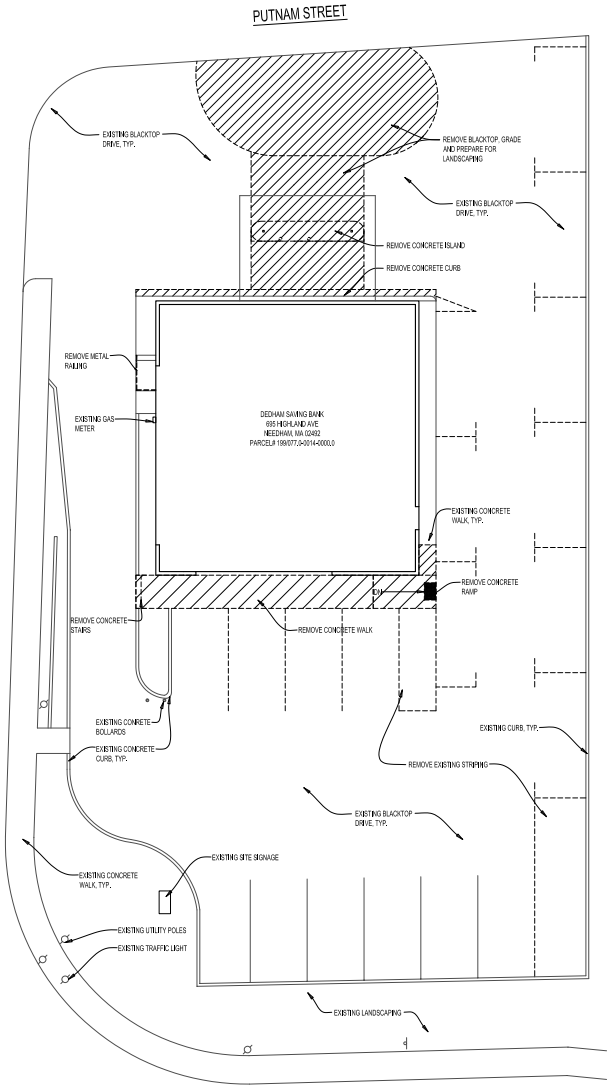


1 DEMOLITION SITE PLAN
SCALE: 1" = 10'-0"

REGISTERED ARCHITECT
No. AR-111306
Cincinnati
RSL COMMERCIAL ARCHITECTURE
8927 Rossash Road
Cincinnati, OH 45236
513-891-9950 phone
513-891-9951 FAX
www.rslarch.com

1550 Kemper Meadow Dr.
Cincinnati, Ohio 45240
(513) 825-5800 [p]
513.825.1947 [f]
www.dei-corp.com

ARCHITECTURAL SITE PLAN

BRANCH RENOVATION FOR:
Dedham Savings
695 Highland Ave
Needham, MA 02492

REVISIONS

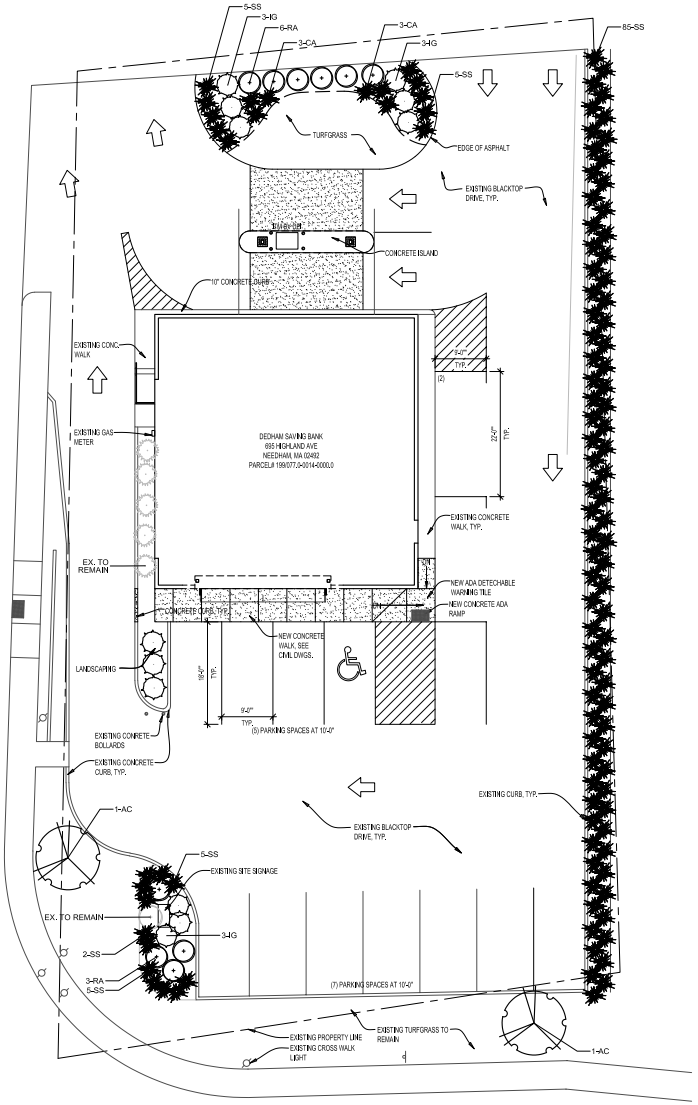
BY
TAS

ISSUE DATE
08-20-24

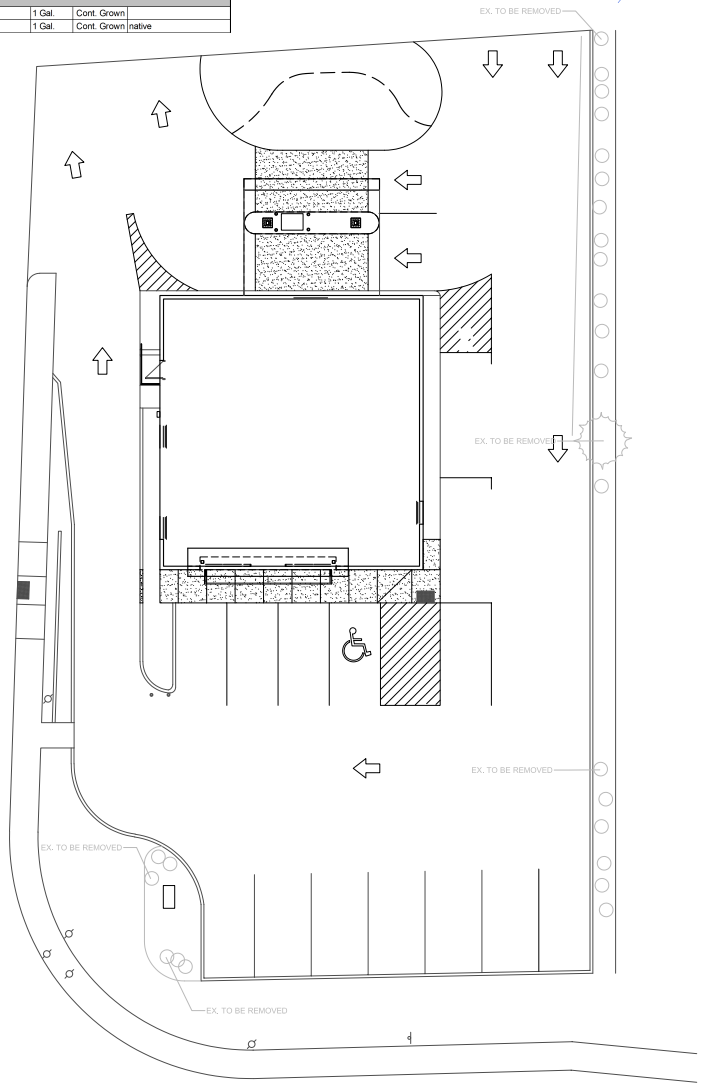
JOB NO.
224059

SHEET NO.
AS-1.0

PLANT SCHEDULE (THIS SHEET ONLY)						
KEY	QTY	BOTANICAL NAME	COMMON NAME	SIZE	ROOT	REMARKS
UNDERSTORY TREES						
AC	2	*Amelanchier canadensis*	Serviceberry	5-6' Ht.	B&B	native
SHRUBS						
RA	9	*Rhus aromatica* 'Gro-Low'	Fragrant Sumac	3 Gal.	Cont. Grown	native
IG	9	*Ilex glabra* 'Shamrock'	Inkberry Holly 'Shamrock'	3 Gal.	Cont. Grown	native
HERBACEOUS PLANTINGS						
CA	6	*Calamagrostis acutiflora* 'Karl Foerster'	Feather Reed Grass	1 Gal.	Cont. Grown	
SS	107	*Schizachyrium scoparium* 'The Blues'	Little Bluestem-The Blues	1 Gal.	Cont. Grown	native



1 LANDSCAPE PLAN
SCALE: 1" = 10'-0"
PLAN NORTH



2 DEMOLITION PLAN
SCALE: 1" = 10'-0"
PLAN NORTH

COMMONWEALTH OF MASSACHUSETTS
JOHN KENNEY
CIVIL
No. 53085
08/26/2024
PROFESSIONAL ENGINEER

DuBois & King inc.
1550 Kemper Meadow Dr.
Cincinnati, Ohio 45240
(513) 825-5800 [p]
513.825.1947 [f]
www.dei-corp.com

LANDSCAPE PLAN

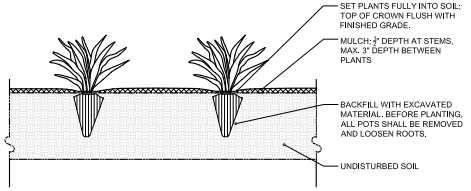
BRANCH RENOVATION FOR:
Dedham Savings
695 Highland Ave
Needham, MA 02492

REVISIONS

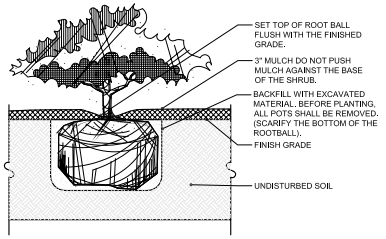
BY
EDL
ISSUE DATE
08-20-24
JOB NO.
224059
SHEET NO.
LS-1.0

GENERAL PLANTING NOTES:

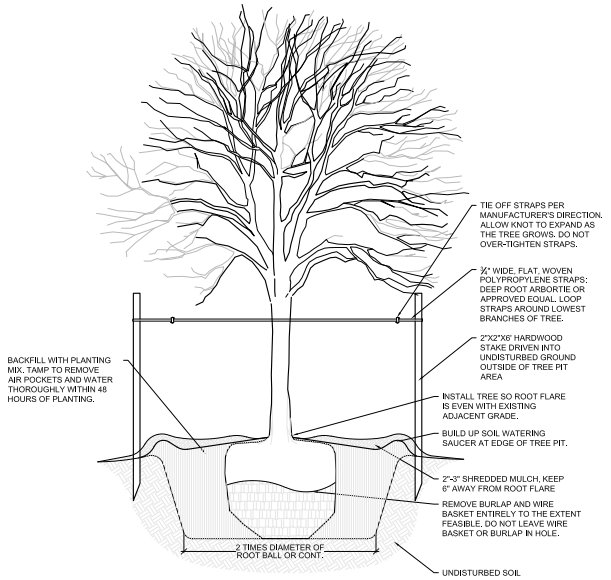
1. ALL PLANT MATERIAL SHALL CONFORM TO THE SIZES GIVEN IN THE PLANT SCHEDULE AND SHALL BE NURSERY GROWN IN ACCORDANCE WITH THE "AMERICAN STANDARDS FOR NURSERY STOCK, ANSI260.1-2004" LATEST EDITION PREPARED BY THE AMERICAN ASSOCIATION OF NURSERYMEN.
2. PLANTING LOCATIONS FOR TREES SHALL BE STAKED OUT PRIOR TO PLANTING. CONTRACT ADMINISTRATOR MAY ADJUST THE STAKES AS NEEDED, PRIOR TO PLANT INSTALLATION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING THE STAKES DURING CONSTRUCTION.
3. CONTRACTOR MUST VERIFY THE CORRECT LOCATION OF ANY EXISTING UTILITIES WHICH ARE UNDERGROUND, PRIOR TO PLANT INSTALLATION.
4. ALL LANDSCAPE CONSTRUCTION ACTIVITIES SHALL BE CONFINED TO WITHIN THE LIMITS OF DISTURBANCE AS IDENTIFIED ON THE PLANS OR OTHERWISE DIRECTED BY THE CONTRACT ADMINISTRATOR. THE CONTRACTOR SHALL MINIMIZE COMPACTION TO AREAS THAT WILL BE PLANTED.
5. ALL DISTURBED AREAS SHALL BE LOOSENED TO A DEPTH OF 2 INCHES PRIOR TO BEING SEEDED AND MULCHED AS SPECIFIED, WITHIN 7 DAYS OF FINAL GRADING UNLESS OTHERWISE DIRECTED BY CONTRACT ADMINISTRATOR.
6. ALL PLANT MATERIALS USED SHALL BE NURSERY STOCK AND SHALL BE GUARANTEED FOR A PERIOD OF ONE (1) YEAR FROM THE DATE OF INSTALLATION. ANY MATERIAL WHICH DIES OR DOES NOT SHOW HEALTHY APPEARANCE WITHIN THIS TIME SHALL BE REPLACED AT THE CONTRACTOR'S EXPENSE; WITH SAME WARRANTY REQUIREMENTS AS THE ORIGINAL. WARRANTIES TYPICALLY DO NOT COVER LOSS DUE TO INSECT INFESTATION OR MECHANICAL DAMAGE (I.E. SNOW STORAGE).
7. PAVEMENT OR ROAD BASE MATERIAL ENCOUNTERED IN ANY LAWN OR PLANTING BED SHALL BE REMOVED AND DISPOSED OF BY THE CONTRACTOR AND SUITABLE AMENDED SOIL INSTALLED AS SPECIFIED IN THE TURF ESTABLISHMENT SCHEDULE.
8. PLANT INSPECTION: ALL PLANT MATERIAL SHALL BE INSPECTED FOR DAMAGE OR DEFECT UPON ARRIVAL TO PROJECT SITE BY CONTRACT ADMINISTRATOR.
9. PLANT MATERIAL AVAILABILITY MAY VARY AT THE TIME OF CONSTRUCTION. ANY SUBSITUTIONS ARE TO BE OF EQUIVALENT TYPE AND SIZE (OR LARGER), AND MUST BE APPROVED BY THE LANDSCAPE ARCHITECT BEFORE INSTALLATION.
10. SETTING PLANTS: PLACE ROOTBALL ON TOP OF STABLE SOIL SO THAT THE TRUNK FLARE/ ROOTBALL IS 1" TO 2" HIGHER THAN FINISHED GRADE, AVOID PLANTING TOO DEEP, REMOVE TWINE AND BURLAP FROM TOP HALF OF ROOTBALL AND PULL BACK. REMOVE SYNTHETIC BURLAP AND STRING ENTIRELY. LOOSEN AND/OR SLASH ANY COMPACTED ROOTS.
11. EXISTING SOIL IN PLANTING BED AREAS SHALL BE AMENDED TO A MINIMUM OF 12: AND SOIL MIX IN ALL PLANTING BEDS SHALL BE ONE THIRD EXISTING SOIL, ONE THIRD FURNISHED SOIL AND ONE THIRD ORGANIC MATERIAL SUCH AS LEAFGRO.
12. PLANTING SOIL MIXTURE: IMPORTED TOPSOIL SHALL BE FERTILE, FRIABLE, SANDY LOAM CONTAINING A MINIMUM OF 1.5% BY DRY WEIGHT OF ORGANIC MATTER; FREE FROM SUBSOIL, REFUSE, DEBRIS, ROOTS, HEAVY CLAY, STONES LARGER THAN 20MM AND NOXIOUS WEED SEEDS. PH SHALL BE BETWEEN 5.5 TO 6.5. ORGANIC MATERIAL IN TOPSOIL SHALL BE FULLY COMPOSTED AND ODOR FREE; SCREENED TO A ½ INCH; NO SEWAGE SLUDGE OR CHEMICALS; APPROVED FOR USE ON ORGANIC FARMS.
13. ALL PLANT BEDS SHAL BE MULCHED WITH A MINIMUM OF 2" AND A MZIMUM OF 3" LAYER OF MULCH WITHIN TWO DAYS AFTER PLANTING. THIS SHALL BE SHREDDED BARK, AND SHALL COVER ENTIRELY THE PLANTING BED.
14. STAKE AND GUY: STAKE AND GUY TREES WHEN NECESSARY TO STABILIZE ROOT BALL IN LOOSE SOIL OR HIGH WINDS AS DIRECTED BY CONTRACT ADMINISTRATOR. REMOVE ALL STAKES AND GUY MATERIALS ONE YEAR AFTER PLANTING.
15. WATERING: ALL PLANTS SHALL BE CAREFULLY AND THOROUGHLY WATERED DURING PLANTING TO PROVIDE BEST GROWING CONDITIONS UNTIL ACCEPTANCE OF THE WORK.
16. PLANT MAINTENANCE: BEGIN MAINTENANCE IMMEDIATELY AFTER PLANTING. MAINTAIN TREES, SHRUBS, AND OTHER PLANTS BY PRUNING, CULTIVATING, AND WEEDING AS REQUIRED FOR HEALTHY GROWTH. RESTORE PLANTING SAUCERS. TIGHTEN AND REPAIR STAKE AND GUY SUPPORTS AND RESTORE TREES AND SHRUBS TO PROPER GRADES OR VERTICAL POSITIONS AS REQUIRED. AT THE EXPENSE OF CONTRACTOR.
17. ANY DAMAGE TO THE EXISTING UTILITIES, BUILDINGS, PAVING, CURBS, WALLS, VEGETATION AND ANY OTHER EXISTING FEATURES NOT DESIGNATED FOR REMOVAL ON THESE PLANS SHALL BE REPAIRED TO PREVIOUS CONDITION OR REPLACED AT THE CONTRACTOR'S EXPENSE. ALL AREAS DISTURBED DURING CONSTRUCTION ARE TO BE SEEDED PER THE PLANS AND SPECIFICATIONS UNLESS OTHERWISE NOTED.



HERBACEOUS PLANTING DETAIL
SCALE: NTS



SHRUB PLANTING DETAIL
SCALE: NTS



DECIDUOUS TREE PLANTING DETAIL
SCALE: NTS

DuBois & King, Inc.
1550 Kemper Meadow Dr.
Cincinnati, Ohio 45240
(513) 825-5800 [p]
513.825.1947 [f]
www.dei-corp.com

LANDSCAPE NOTES AND DETAILS

BRANCH RENOVATION FOR:
Dedham Savings
695 Highland Ave
Needham, MA 02492

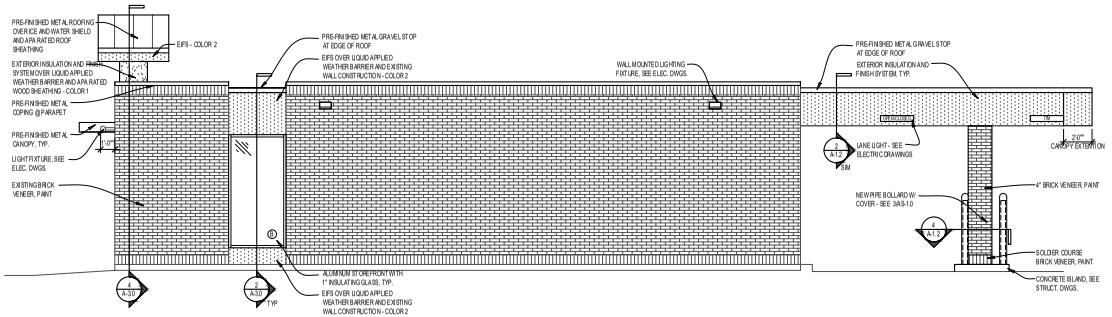
REVISIONS

BY	ISSUE DATE	JOB NO.	SHEET NO.
EDL	08-20-24	224059	LS-2.0

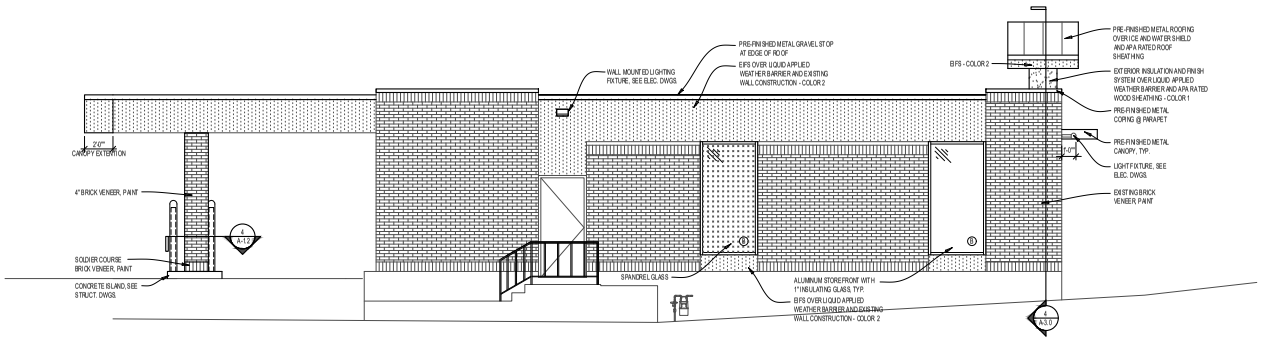
COMMONWEALTH OF MASSACHUSETTS
JOHN KENNEY
CIVIL
No. 53085
08/26/2024
PROFESSIONAL ENGINEER

EXTERIOR SELECTION SCHEDULE			
MATERIAL TYPE	MANUFACTURER	COLOR	NOTES
BRICK VENEER	GLEN GERY (OR EQUAL)	MATCH EXISTING	
BRICK– FIELD (PAINT)	SHERWIN–WILLIAMS	SW 7016–MINDFUL GRAY	
BRICK – SOLDIER COURSES (PAINT)	SHERWIN–WILLIAMS	SW 7018 DOVETAIL	
EIFS – COLOR 1	DRYVIT	SW 7757ST–HIGH REFLECTIVE WHITE	SANDPEBBLE FINISH
EIFS – COLOR 2	DRYVIT	SW #1043T DOVER SKY	
STOREFRONT FRAMING	OLDCASTLE	LIGHT BRONZE 700 LT	
EXTERIOR GLAZING	VITRO	CLEAR (LOW–E)	SOLAR BAN 60
EXTERIOR GLAZING	VITRO	SPANDREL (GREY)	
PRE–FAB ALUMINUM CANOPY	PAC–CLAD	CARDINAL RED	
GRAPHIC LIGHTS	ELLIPTIPAR	TYPE SP6/STYLE S171	
METAL ROOF	PAC–CLAD	SANDSTONE STEEL	
METAL COPING (UPPER PARAPETS)	PAC–CLAD	SANDSTONE STEEL	
METAL GRAVEL STOP (DRIVE THRU & ROOF EDGE)	PAC–CLAD	GRANITE	
PAINT AT H.M. DOOR AND FRAME	SHERWIN–WILLIAMS	SW 7018 DOVETAIL	
RAILING			

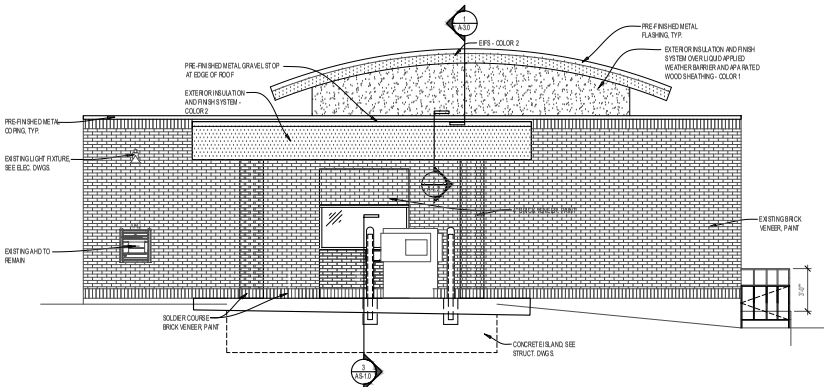
NOTES
1. SEE SPECIFICATIONS FOR ALL ITEMS RELATING TO THIS SHEET.
2. ALL STOREFRONT DIMENSIONS THIS SHEET ARE TO OPENING. CONFIRM CONTRACTOR TO PROVIDE DETAILED SHOP DRAWINGS TO REFLECT ALL MANUFACTURER RECOMMENDED CLEARANCES / SHIMS SPACING.
3. CONFIRM CONTRACTOR TO FIELD VERIFY ALL OPENINGS PRIOR TO MANUFACTURING OF STOREFRONT SYSTEMS.
4. VERIFY ALL COLORS AND FINISHES WITH DEI.
5. SEE SPECIFICATIONS FOR SUBSTITUTION PROCEDURES OF "EQUAL" MATERIALS.



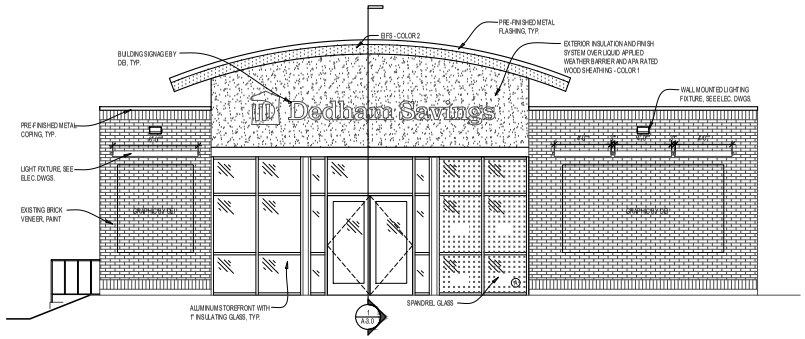
4 EAST ELEVATION
SCALE: 1/4" = 1'-0"



3 WEST ELEVATION
SCALE: 1/4" = 1'-0"



2 NORTH ELEVATION
SCALE: 1/4" = 1'-0"



1 SOUTH ELEVATION
SCALE: 1/4" = 1'-0"

DEI COMMERCIAL ARCHITECTURE
RSL
8927 Rossash Road
Cincinnati, OH 45236
513-891-9950 phone
513-891-9951 fax
www.rslarch.com

1550 Kemper Meadow Dr.
Cincinnati, Ohio 45240
(513) 825–5800 [p]
513.825.1947 [f]
www.dei–corp.com

EXTERIOR ELEVATIONS

BRANCH RENOVATION FOR:
Dedham Savings
695 Highland Ave
Needham, MA 02492

REVISIONS

BY
XX

ISSUE DATE
08-20-24

JOB NO.
224059

SHEET NO.
A-2.1

NEEDHAM PLANNING BOARD MINUTES

September 24, 2024

The Needham Planning Board meeting, held in the Charles River Room of the Public Services Administration Building, and virtually using Zoom, was called to order by Natasha Espada, Chairman, on Tuesday, September 24, 2024, at 7:00 p.m. with Messrs. Crocker, Block, Alpert and McCullen, Planner, Ms. Newman and Assistant Planner, Ms. Clee.

Ms. Espada noted this is an open meeting that is being held in a remote manner per state guidelines. She reviewed the rules of conduct for all meetings. This meeting includes one public hearing and public comment will be allowed. If any votes are taken at the meeting the vote will be conducted by roll call.

Public Hearing:

7:00 p.m. – Major Project Site Plan Special Permit No. 2024-01: Needham Housing Authority (NHA), 21 Highland Circle, Suite 10, Needham, MA, Petitioner (Property located at 0 Linden Street and 5 Chambers Street, Needham, Massachusetts). Regarding request to redevelop the NHA Linden-Chambers property.

Upon a motion made by Mr. McCullen, and seconded by Mr. Crocker, it was by a vote of the five members present unanimously:
VOTED: to open the hearing.

Upon a motion made by Mr. Block, and seconded by Mr. Crocker, it was by a vote of the five members present unanimously:
VOTED: to waive the reading of the public hearing notice.

Ms. Espada noted comments from the following Town entities: an email from Building Commissioner Joseph Prondak, dated 8/30/24, with no concerns; a memo from Fire Chief Tom Conroy, dated 9/3/24, with no issues; a memo from Police Chief John Schlittler, dated 9/5/24, with comments; a memo from the Design Review Board (DRB) with comments; an email from Director of Conservation Debbie Anderson, dated 9/20/24, with comments and noting their hearing is under way; an email from Public Health Assistant Director Tara Gurge, dated 9/18/24, with comments and a letter from Town Engineer Thomas Ryder, dated 9/19/24, with comments and recommendations.

Mr. McCullen stated he spoke with Town Counsel Christopher Heep. His property is not an abutter and, legally, he did not get a notice. Due to the engineer's use of the phrase "the area", if there is an order of condition, his property could be considered in the area. He filed with the Town Clerk a perceived conflict of interest. Robert Smart, representative for the applicant, stated the Housing Authority sent out an RFP and evaluated several prospects. Affordable Housing and Services Collaborative (AHSC) Peabody Developer LLC was chosen. Arrangements are not complete yet. He noted the proposal is to replace 72 units in 18 buildings on Linden Street with 136 units. That is an increase of 64 units. There is no proposal to change the 5 Chambers Street buildings with 80 units. He noted that may be Phase 2 which will be some years down the road. There are currently 152 units on site, and this will increase to 216 units.

Mr. Smart noted Phase 1 is divided into Phase 1A and Phase 1B. Phase 1A is the demolition of 10 buildings. The 40 people who live there will be temporarily relocated at no cost to them. The north wing will be constructed with 76 units and common facilities. When the building is constructed the 40 residents will be moved in. In Phase 1B the remaining 8 buildings will be demolished and the 32 current residents will be moved into the new north wing. Then the southerly wing will be constructed. Town Meeting approved 4 zoning articles related to construction in May 2024. The Attorney General has not yet approved the Articles. Town Counsel Heep has signed an extension. The issue is the MBTA Communities Act has caused a backup in Affordable Housing Districts. Multi-family housing is by right with site plan review. The property meets all density, dimensional and parking requirements for the By-Law. There are a couple more parking spaces than required for Linden Street. The Chambers buildings have more parking than required under the By-Law. The decision is to approve the Site Plan Application. The applicant would like a decision rendered by the end of October.

Mr. Alpert asked if this could be recorded before the Attorney General approved the zoning. Mr. Smart will need to look into that. His inclination would be to do it. He would like to file the permit application the first week of November. It is a competitive process. This timeline would put them in a good position. He noted the By-Law does not require any unit mix. The applicant is proposing 128 1-bed units and 8 2-bed units. It is possible the applicant may want to build less 2-bed units. They would like the flexibility to change in the decision without having to come back to the Board. Mr. Block stated he checked with Town Counsel on this. He is familiar with a number of funding programs and feels this is not an unreasonable approach. Mr. Smart noted the Planning Board puts limits on how long the relief is for. The applicant still needs to go through a lengthy funding process. It may not be approved in 2025 but may be 2026 and that may only be Phase 1. He would like 3 years on Phase 1A and an additional 18 months for Phase 1B.

Dan Chen, of Bargmann Hendrie + Archetype, Inc. (BHA), gave a quick overview of the project. They met with the Conservation Commission 2 weeks ago. The Low-Income Tax Credit funding is in early November. He met with various Board's and abutters to solicit public input. He noted the 5 buildings were built between 1959 and 1962. There are 152 undersized units with poor physical condition of the units and the site. There are some wetland challenges. There are 18 single story buildings with 4 units in each. All are studio units. There is also a community building, maintenance building and storage units. This is the Linden development only. It is all in the Affordable Housing District. The 76 new units replace the 10 existing Linden units. There will be 41 parking spaces for 72 1-bed and 4 2-bed units. Phase 1B will be 4 stories with 60 units – 56 1-bed and 4 2-bed with 29 parking spaces. Mr. Block asked if the intent was to install parking for all of Phase 1 during Phase 1A. Mr. Chen stated Phase 1A parking will be done first.

Anthony Donato, of Hancock Associates, stated the project complies with the town's stormwater requirements and adds more than one inch of recharge for the total amount of impervious area for Phase 1. Calculations have been provided for a 2-, 10- and 100-year event. There will be a reduction of water when completed. It incorporates best management practices in the design and adds buffer zones. He showed the Demolition and Erosion Control Plan. It incorporates several measures to prevent run off during construction along the 25 foot no disturb line. There will be hay bales and crushed stone construction access for vehicles and sediment traps for existing catch basins. He showed the overall site plan with the proposed parking. He noted the 2 fire access roads will be porous pavement. There will be one large recharge system at the front of the main entrance of the site and one on the north side surrounded by crushed stone. The grading is relatively flat but there will be catch basins within the site. All utilities are from Linden Street and no gas is proposed.

Mr. Crocker stated this is an opportunity and asked what it would take to do more for storm water for this site. Ms. Espada noted they are going beyond the requirements. Mr. Crocker feels this would make it better but he would strongly look at a higher retention with a retention pond or basin on the right side of the property. Mr. Chen noted that was part of the open space amenity. Mr. Block stated he was told by Town Counsel they need to be careful. The Board cannot require the applicant to exceed the By-Law and state standard. Comments from the Town Engineer regarding drainage were looking to make further improvements. Ms. Espada stated the Town Engineer encouraged that but does not require it. Reginald Foster, of the Needham Housing Authority, stated if they can help solve the problem it would be a good thing. Funding is an issue and timing. He understands there is a townwide study and they are seeking no funding for that. The town needs to prioritize the areas in town if they are fortunate to get funding in the first round. This project cannot be held up to help the town.

Mr. Block feels some kind of conference should be held with the applicant and Town Engineer to see what could be done and what the applicant can do. The Board cannot require it, but he is encouraging the applicant to do this. The topography drops and slopes toward the neighbors. He would like time to study this more to see if hay bales would be enough to prevent run off to the neighbors. Ms. Espada noted the applicant would need to submit a construction plan. Mr. Donato stated there is a channel between and the property is rather level. Mr. Alpert noted the Conservation Commission will have jurisdiction that the stream would not impact neighbors. Mr. Donato stated the project will be increasing the buffer to the abutters. Mr. Smart is concerned with a potential delay in getting a decision from the Board. Mr. Foster has had a number of discussions with the DPW and will continue to work on drainage and solutions. The hearing should not be kept open until they meet again with the DPW. He would be happy with a condition that reads substantially like what the Town Engineer wrote.

Mr. Crocker understands there is an opportunity to deal with this now that will not happen again. Mr. Block feels the applicant can schedule a call with the Town Engineer. Mr. Smart is happy to schedule a call but would not like the hearing

held open for that. Curtis Puncher, of Ground Inc., showed the landscape plan. He noted they want to get the residents outside. There are 3 program areas; 1) the north garden which is a mini park with lawn and plantings, a seating area with a shade trellis and benches on concrete pads; 2) the back patio where, in the central hub, the main interior amenity space opens to an outdoor patio with permeable pavers, lots of flexible open space, seating and grill stations for community gatherings and 3) the south community gardens. The garden plots presently are about 600 square feet of plantable area and will be going to about 1,600 square feet. There will be water, composting and a shed there. There will be another small patio with a shade structure. All program areas are linked with walking paths that are interrupted at times by fire lanes. These link with the existing trails in the forested site. There is a generous landing pad at the roundabout with benches and stone walls between the building and parking to shelter the building from headlights.

Mr. Puncher noted a tree survey was done. An arborist came in and all trees were assessed on the site. He showed a plan of the 24 trees to be removed and 8 to be retained. Some of the trees to be removed are unhealthy, are in decline or invasive species. The rest are in conflict with the development. There will be 80 new trees planted. More than half of the new trees are shade canopy trees with the remainder understory ornamental or a collection of evergreen buffer trees. He reviewed the plantings. They are working from pallettes. There will be the north garden, Linden Street, the building frontage and the buffer. There will be low maintenance plants for the frontage with a good mix of bloom times. The species are 100% native for the buffers and shade tolerant. The north garden is more ornamental with pops of color. There is a photometrics plan for the lighting. There are the requisite number of candles on the drives and foot paths. There will be no light exiting the site. The fixtures were chosen for their cut-off value and will not bleed out.

Mr. Crocker asked about the right side and the differences between the light and dark green on the plans. Mr. Chen stated the light green is lawn and the dark green is a mix of shrubs and perennials. The building height to the top is 53 feet. The building is 4 stories with 8-foot unit heights and 10 feet from floor to floor. The building's roof is a shed type roof and flat in conformance with the Affordable Housing District. The amenities are in the center with elevators, stairs and a lobby area. The units flank the corridors. Phase 1A includes 2 elevators and solar panels. Phase 1B will be the roof mechanicals. The building is served by 136 units, 4 stories and 3 exit stairs. The main mechanical cores are centered in the building to serve both sides of the building. He showed the elevations. The material will be fiber cement panels and the windows will be fiber glass or pvc, which were chosen for their high insulation values. There will be triple glazing and they are doing passive house.

Mr. Foster stated an application has been put in. If successful in the first round they would get the funding in Spring or Summer of 2025 and will close the financing in the Fall. Construction will start in 2026. At the same time they will put in an application for funds for Phase 1B in 2025 and the round starts again. Mr. Chen showed artists renderings from various angles. Mr. Crocker asked if the floors are 10 feet. Mr. Chen stated they are 8 feet but the floor to floor construction is 10 feet. He noted supplemental studies were done for wetlands, traffic/parking, geotechnical and passive house certification. The 25 foot no disturb zone is being reestablished and they are looking at a 50-foot buffer zone. The wetland delineation was done last year. He showed the wetland encroachment and the proposal out of the wetland. The Chamber Street encroachment stays the same.

Mr. Chen noted the Scope of Study for traffic. They modeled 275 units for development for a worst case scenario due to the High Rock School and the site constraints. There are 7 signalized intersections and 4 unsignalized intersections. The conclusions were the impact would be negligible at 3 signalized intersections. All others are not degrading to a B or better. There is no significant degrading to the neighborhood. Mr. McCullen looked at the study. High Rock as a middle school would be a future elementary school. He feels there will be more walkers and less traffic. It will be awful for 15 minutes twice a day consistently. There may be some push back on some speed studies, but he is ok with the traffic study that was done. Mr. Chen noted there are currently 86 parking spaces for 152 units. Half of that is assigned parking and there is a 35% utilization rate. There are 70 spaces as part of the proposal. He reviewed the geotechnical borings and noted the passive house is a very stringent standard. They are committed to that and solar on day 1.

Ms. Espada opened the hearing to public comment. Ross Donald, of 25 H Chambers Street, has lived in public housing for 14 years. He is president of the local tenant's organization that has been reestablished. His major concerns are 1) the redevelopment of the area and implications for tenants; 2) the condition of the property indoor and out and 3) he is committed to hearing and supporting individual tenants. They will act as a group and will make NHA a better place to live creating a stress free and healthy environment supporting energy efficiency, thermal energy, solar, passive systems and solar

daylighting. Sustainability is not being addressed. He recognized buildings should be maintained and not torn down. Demolition is not considered part of sustainability. He stated he had not seen these plans until tonight. Ms. Espada clarified everything goes into the packet on the Thursday before the meeting and she noted passive housing is the most stringent. Mr. Donald stated a lot of people are not computer literate.

Helen Garagozian, an 11-year resident of public housing, stated she was the president for 3 years. There was an opportunity to gain a wider perspective of resident's needs. An excellent company has been selected for this project. She feels the town is in a perfect storm for affordable housing. Approving this zoning gives residents an affordable new unit they can move into and live with dignity. It would also improve the curb appeal of Linden Street. Marlene Costa, resident and Linden/Chambers Treasurer for the tenant organization, stated she is concerned for fire safety, wetlands and catch basins. It was stated the original Fire Chief had concerns there was no adequate fire lane to reach the back of the building. That is a very serious issue. The windows will not open more than 4 inches. She noted most are seniors and disabled and she questioned how they will get out of the building safely. The project is going from 4 sets of stairs to 3 sets now. Cutting corners endangers the lives of the people living there. There is no air exchange from the windows. For wetlands and catch basins she asked if any feasibility was done for structural integrity. This is in the wetlands and it has a canal that runs through it. Water cannot be removed. She is glad the Conservation Commission has not signed off. She asked if the land would support the weight of the building. There are large amounts of trees being removed. The plan is to remove large, healthy, beautiful trees that are there now. Removing trees contributes to flooding. The street floods after 2½ inches of rain. How many gallons of water does the catch basin hold? She noted the catch basin is right under the parking lot and asked how safe that will be. She asked where people would park their cars if there are no spaces. Tony Donato, of Hancock Engineering, stated it is a general practice to have recharge under parking. High density polyethylene provides overflow into the municipal system. There will be no building in the wetlands but outside of them. He noted parking meets the zoning standard. Mr. Chen stated the Fire Chief had no comment on 9/3/24. There is no fire lane in the back but a fire hydrant on both sides of the building approved by the Fire Chief. There is hard lane access accessible if needed. This has been discussed extensively with the Fire Department. The windows have a delimiter opening of 4 inches which is a building code requirement in public housing. The fire safety strategy is to shelter in place. The buildings have totally sprinklered systems and fire walls in all units. They do not want people to go outside. There is a structural engineer on Board. There may be some ground improvements. He noted there will be air exchange through the Energy Recovery Ventilator (ERV).

Dorina Moriarty, of 174 Linden Street, noted there is no real fire escape in place. Sprinklers are not known to save lives from smoke and inhalation. She is in total agreement with the team members. She is a former medical administrator. Her biggest concern is the severe impact the demolition would have on the health of the residents. She fears for the next door neighbor dependent on oxygen and the school kids across the street will be affected as well as all in the area. There are chronic mold issues. Overdevelopment will increase flooding and mold. She noted a relocation plan is not in place and those who cannot speak English do not know what is going on. She feels a more suitable site to do this project on should be chosen.

Ms. Espada asked if a hazmat review has been done. Mr. Chen stated there was an Asbestos Containing Material Hazmat Report (ACM) done on the 18 Linden Street buildings as well as the 5 Chambers buildings as part of the demolition report. Any demolition will be approved through the DEP required hazmat abatement process. They know areas that are hot. This will be done with a hygienist on site to identify materials. There will be containment on site with licensed contractors. Tim Burke, of 188 C Linden Street, has been there since 2007. He is concerned that all the one-story bungalows were built on sand with no basements. He asked how a 4-story building can be built on sand. The parking lot slopes dramatically to Maple Street. With the trees being taken down it will create more water, so the trees need to be kept. On page 32 of the agreement regarding the High Rock School, during the school year, 2 times a day, there is a traffic jam. He is against this site. The buildings are usable now. The condition is bad due to lack of maintenance and the windows have never been washed. He admires the work of the Conservation Commission. He asked where the building starts in the buffer zone.

Ed Brailey, of 229 High Rock Street, goes up and down Linden Street regularly. It is not only a problem in the morning and afternoon but a 100% problem. Linden is too narrow, and it is hard for 2 cars to pass when a car is parked on the side of the road. The project is putting an egress where the playground is. They need at least another 4 feet of Linden Street in the area they are talking about. He noted there are tire busting curbs along that area. He is concerned with 4 stories but was mollified with the sketches. He likes Phase 1A but is concerned with the traffic. He sees residents out on benches but he did not hear anything about benches. Ms. Espada commented she saw benches on the plan. Mr. McCullen stated Linden

Street has come up with 2 other Committees should this project go forward. For this project, they know traffic is an issue and some things need to be done. The tire busting curbs are bad for tires but better for pedestrians. The town needs to look at the school's future use and if it will be a townwide grade 6 or an elementary school. He feels it is all manageable. He does not really have concerns, but he knows there are concerns with engineering. Ms. Espada asked if he had any concern about the number of units or the phasing. Mr. McCullen has no concerns with that.

Mr. Alpert stated he has no comments and is favor. He feels it is a great boon to the community. He is not sure if the hearing will be closed tonight or left open for answers. He would like to hear from the Fire Chief about the fire safety issues and the residents' specific questions. He would also like to hear about storm water, the safety of the sprinkler system and fire walls. He would like specific answers to the specific questions from the Fire Chief. Mr. Crocker agrees. He asked Ms. Newman is there is any issue waiting to the next meeting. Would there still be a decision by the end of October if they waited? Ms. Newman understands the ultimate deadline is approval in January with a preliminary deadline at the end of October. Mr. Foster noted the ultimate drop-dead date is January, but they prefer to have the decision for the preliminary application date. That would put them in the ideal position. Ms. Newman noted the hearing could be kept open as there are meetings 10/15 and 10/29. The hearing could be continued to 10/15. She would have a decision on 10/29 at the earliest.

Mr. Crocker stated at the Muzi site there were walking paths. Then for the fire there were open landscape style specific pavers where grass could grow through. Coming from the street there is permeable asphalt. He asked if it could be the landscape style material used for fire trucks. That would allow a lot more infiltration of water. Mr. Block understands the urgency and funding the applicant's process. It is very competitive and could be jeopardized if they want until the deadline. He would like to see the Board move hastily. He understands the Fire commented the patio in back was adequate for them. Mr. McCullen stated it was not originally but was increased due to the Fire comments. Mr. Block stated there is one open issue. He wants to have a little more understanding of the storm water management. He is ok with the phasing and the unit maximum. The Board could have a condition providing the flexibility the applicant is looking for with unit mix. The residents have concerns, but passive house addresses a lot of those. Ms. Espada agrees with her colleagues. The unit mix and phasing are ok. The Board needs more information on Fire, stormwater and sound. The Fire information should be in writing. Mr. Alpert stated the applicant is looking for a site plan decision and this is a site plan special permit. It is not expiring for 3 years and then another 18 months on top of that. There is a 2-year limit in the special permit section, and then a provision for extending it. He would like an opinion from Town Counsel if it could be waived because it is a site plan. Mr. Heep stated he has reviewed the By-Law and will let them know before the next meeting. Mr. Crocker would like something about the fire lanes and if there could be different material.

Upon a motion made by Mr. Alpert, and seconded by Mr. McCullen, it was by a vote of the five members present unanimously:
VOTED: to continue the hearing to 10/15/24 at 7:00 p.m.

The Board took a 5-minute recess.

Discussion and vote of Planning Board Recommendations: Zoning Articles for the October 21, 2024 Special Town Meeting:

- **Article 1: Amend Zoning By-law – Multi-Family Overlay District (Base Plan)**
- **Article 2: Amend Zoning By-law – Map change for Multi-Family Overlay District (Base Plan)**
- **Article 3: Amend Zoning By-law – Multi-Family Overlay District (Neighborhood Housing Plan)**
- **Article 4: Amend Zoning By-law – Map change for Multi-Family Overlay District (Neighborhood Housing Plan)**

Town Counsel Heep noted there is a new draft and he walked through the changes from the last meeting. On page 5, below the dimensional table in Section 3.17.5.1, there was a footnote that allowed for an additional curb cut by special permit. There is no prohibition in the rest of the draft. This was an exception to the rule but there is no rule. On page 9, a Special Development Standard Section was added that says "Multi-family housing shall employ existing curb cuts on Highland Avenue and West Street." This is saying the applicant would need to apply for a special permit if they want additional curb cuts. In the next section, on page 7, a new screening standard for garages was added in Section 3.17.6 (c) stating there

should be no view of parked cars from Highland Avenue. It needs to be indistinguishable from the rest of the front. There is a corresponding change on page 6. Mr. Block asked what is the Needham Commons? It was agreed to change Needham Commons to West Street.

Mr. Heep stated 44 units per acre are by right and a footnote was added that the number could go above that by special permit. Mr. Alpert noted the 44 units per acre gives the applicant the 187 units they want. Mr. Heep noted the submission requirement, Section 3.17.9.4 (a), on page 11, was corrected and in (b) an affordable housing development standard was included as part of the application as it was missing. Mr. Block asked why affordable was added. Mr. Heep noted that is what the applicant needs to comply with to get approval. He added a reference it is a component of the site plan review. On page 12, a new Section 3.17.11 was added that makes clear in specific cases where a special permit is required. It clarifies the Planning Board is the Special Permit Granting Authority. Mr. Alpert noted there are a lot of special permits in Article 3 if it passes. Mr. Heep noted Part 4 amends Section 7.6.1 and adds Section 3.17 to the list of Sections the Planning Board is Special Permitting Granting Authority for.

Mr. Heep noted in Article 3, page 23, there are a couple of minor changes. On page 25, it amends the 3.17 section that deals with parking requirements for mixed-use projects. It describes what is needed and refers back to Section 5.1. That is only applicable to mixed-use developments. Mr. Block stated that is generally waived in the Center Business District. He feels the standard should be revised next May. On page 192, in Section 5.1.1.5, parking can be waived except in the Center Business District. Ms. Newman noted the Zoning Board of Appeals (ZBA) has authority to grant waivers in all except the Center Business District. Mr. Alpert noted Section 5.1.1.6 says the Planning Board can grant waivers in that District. Ms. Newman stated they may need to revise for the Planning Board's ability to grant all waivers on page 25. Mr. Heep stated in Section 5.1 he will add the Planning Board will serve as the waiver granting authority. He circled back to page 9, where the change says 100 West Street will utilize the 2 existing curb cuts. They can modify the existing, but none can be added without a special permit. The Executive Office of Housing and Livable Communities (EOHLC) may not approve that standard. Everyone envisioned something equal to what is there but someone could subdivide into 4 lots and would need curb cuts for each of the 4 acres. He is concerned the EOHLC would not approve. The current zoning minimum is 10,000 square feet. He is concerned this would be held against us. He has posed the question but has not received a response. The Board could say the developer is limited to 2 curb cuts as feasible, eliminate the requirement entirely or do nothing and see what happens. Mr. Alpert suggested saying "subject to site plan review." Mr. Block feels that is a good solution. Mr. Heep agreed. Mr. Alpert stated "may be modified by site plan review and additional curb cuts may be added subject to site plan review." Mr. Block suggested changing special permit to site plan review.

Ms. Espada noted she reviewed Wellesley and Rockport's criteria. Wellesley said it was subject to site plan review as follows. It is done by the ZBA and they just added MBTA Communities. Rockport just put criteria and did the same thing. She asked why they are complicating it. Mr. Heeps rationale for the approach is to craft site plan review criteria that was suitable for a by right multi-family housing project consistent with obligations under 3A. Criteria varies from town to town. The existing Sections 7.4 and 7.5 of the By-Law are always applied together and are a special permit process. The Planning Board applying those criteria to a complete by right criteria is challenging. It is preferable to her to have a separate set of criteria appropriate 100% for a by right use. She asked if this should be for the Dover Amendment also. Mr. Heeps feels the Board does not need to tackle that now.

Mr. Alpert agreed with Mr. Heep. This Board should totally review and revise Section 7.4 and 7.5. A lot does not make sense. Mr. Heep has changed some of the wording for the better and has referenced Section 7.4. He could not reference Section 7.5 due to the special permit. He suggested keeping Section 3.17.7 and adding a new paragraph at the end to bring in whatever is in Sections 7.4 and 7.5 by reference. He agrees with Holly Clarke they should capture whatever is in Section 7.4 and 7.5 the Board may possibly want in the future. Mr. Block disagreed with Mr. Alpert. He feels they have captured the specific relevant special permit. Mr. Alpert stated his only objection when 3A was passed, was it was made as of right. He wanted a special permit. The special permit process gives the Board some opportunity to put some reins on developers. Mr. Block feels they captured what elements of municipal control are reasonable given the underlying. Ms. Espada commented she and Mr. Alpert do not feel that way. They feel there should be something else.

Mr. Heep understands Mr. Alpert's suggestions and does not recommend that approach here. Mr. Alpert stated his concern is a developer is left without any understanding of the criteria. Something similar moving over from Section 7.4 and 7.5 into Section 3.17 after a critical review would be ok. He does not feel the criteria should be moved wholesale. Mr. Heep

noted Ms. Clarke's letter suggests Section 7.4.6 criteria should be added. Mr. Crocker would add all of 7.4.6. Mr. Heep will parse through it. Natural landscape is not the best phrase, but he wants a hook in Section 3.17 for the ability to look at the area. It could be some section is brought in subject to a caveat allowing it as a base line. Mr. Block stated relationship of structures is an entirely subjective criteria. The Board has been told for years an arbitrary standard cannot be applied. Mr. Alpert stated it is not arbitrary but subjective. A discussion ensued.

Mr. Heep feels the most important things in this By-Law are the dimensional tables. If the Board wants a regulatory hook in exceptional cases based on facts on a particular site, they can identify the need. Identifying something like Ms. Clarke suggested is a good idea. The most important thing is to identify how big these buildings can be. As a by-right use a developer should be able to refer to the By-Law and put together a plan. The EOHLC guidance is the only site plan review allowed under 3A. They submitted draft zoning to the EOHLC in April and it was sent back with a handful of minor comments. The Board has been making a series of changes since August. The bigger changes may run afoul of the EOHLC. Site plan approval is a better venue. He noted the Design Review Board (DRB) is purely advisory. Mr. Alpert would like to see 7.4.6 (e) come in and take out "natural landscape" and "existing buildings and assets in the area." Mr. Heep will strike that and other compliance with this By-Law. Mr. Alpert agreed.

Mr. Heep wants to make Section 3.17 as self-contained as possible. Mr. Block stated if Mr. Heep feels these modifications expose the Board to vulnerabilities, or has the EOHLC send it back, the Board should maybe roll with what they have and go back at a later date to revise it. He does not want to risk exposure for a referral back. Mr. Heeps feels he can revise 7.4.6 (e) in a way that Mr. Alpert and Mr. McCullen requested for inclusion within the developmental standards included in 3.17. Mr. Alpert is not afraid of the EOHLC bouncing it back. The members did their job and will have passed a By-Law by 12/31/24. Changes will not be made later. Any changes need to be done now. Ms. Espada stated there is no issue with 99% of the developers. For the 1% that makes something so adverse the Board would need to make comments. Mr. Heep can add the language discussed, preserving the Board's ability to push back.

Mr. McCullen stated Board's across the state are realizing they may not have the power they want. This needs to be passed and, with the time limit, it needs to be finalized tonight. He wants to make sure they do not have a flag with the state. It has already been approved and now there are minor revisions. Mr. Crocker feels they are making it far easier for multi-family housing to occur. Minor changes are being made and the Board is not going to come back to this. He agrees with what Mr. Alpert said. The Board reviewed the changes discussed in Section 7.4.6 and 7.5.2.1. Mr. Alpert noted in Section 7.5.2.2 (a), he is not sure that can be done here as there is some criteria. Mr. Heep stated there is no required quantity of landscape along the property lines. Mr. Alpert noted in Section 3.1.7.7 (e) it says plantings shall be provided. Mr. Block noted it is not dictating how much. Mr. Crocker suggested saying "when permissible plantings need to be perimeter based." Mr. Alpert stated there are small setbacks to begin with and a 5-foot setback in some places. The Board should just say they have to have plantings. That allows the Board to request a landscape plan. Mr. Heep stated a landscape plan is one of the requirements in the submission. Ms. Espada asked, in (c), if mixed use is as of right and there is retail, does the Board have any say on hours. Mr. Heep stated if one of the types of mixed use requires a special permit that can be applied. If no special permit, it cannot be applied.

Ms. Espada stated Ms. Clarke brought up the timeframe for decision making. Mr. Heep stated a by right project cannot be unreasonably delayed. A project, in general, should be approved within 6 months. The draft says it shall be approved within 6 months. He will acknowledge the model EOHLC By-Law says the approval should be within 6 months. It starts when the application arrives on the desk. He is comfortable keeping 6 months as a non-binding deadline. He feels it should be kept as open ended but in general the Planning Board shall complete its review within 6 months. Mr. Heep noted there are 2 changes; add the modified version of 7.4.6 (e) to 3.17 and include general language to the 6-month timeline. Ms. Newman added the modifications discussed of changes on pages 6, 9 and 25.

Upon a motion made by Mr. McCullen, and seconded by Mr. Alpert, it was by a vote of the five members present unanimously:
VOTED: to approve the revisions to the Article as agreed upon this evening.

Upon a motion made by Mr. Block, and seconded by Mr. McCullen, it was by a vote of the five members present unanimously:
VOTED: to recommend adoption of Articles 1, 2, 3 and 4 as further revised this evening.

Minutes

The Board will review the minutes at the next meeting.

Report from Planning Director and Board members

Ms. Newman reviewed the dates on the calendar. Ms. Espada and Mr. Crocker will meet with the Moderator on 10/2/24, at 8:00 a.m., to go over the strategy for Town Meeting. She will confirm they are on the Finance Committee agenda for 9/30/24 and 10/9/24. She needs Ms. Espada's comments on the draft power point for the Finance Committee. Mr. Crocker noted the full Board will be meeting on 10/8/24 at the Select Board meeting at 6:00 p.m. Ms. Espada noted 10/8/24 and 10/9/24 she will be attending via zoom.

Upon a motion made by Mr. Alpert, and seconded by Mr. McCullen, it was by a vote of the five members present unanimously:
VOTED: to adjourn the meeting at 10:36 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

_____
Artie Crocker, Vice-Chairman and Clerk

Harrington Heep

Christopher H. Heep
d: 617.804.2422
cheep@harringtonheep.com

MEMORANDUM

TO:	Planning Board
CC:	Lee Newman, Director of Community Planning and Development
	Katie King, Deputy Town Manager
FROM:	Christopher Heep, Town Counsel
SUBJECT:	Political Activity and Ballot Questions
DATE:	November 5, 2024

In anticipation of the possible filing of a referendum petition challenging the Town Meeting action under Articles 8 and 9 of the October 21, 2024 Special Town Meeting Warrant, the Planning Board should be aware of several limitations on its ability, and the ability of the individual Members, to act in support or opposition to a ballot question.

M.G.L. c.268A, §23(b)(2) states as follows:

> No current officer or employee of a…municipal agency shall knowingly, or with reason to know…(ii) use or attempt to use such official position to secure for such officer, employee or others unwarranted privileges or exemptions which are of substantial value and which are not properly available to similarly situated individuals.

The State Ethics Commission has interpreted §23(b)(2) to limit the manner in which elected boards and individual elected officials may engage in political activity related to ballot questions. The State Ethics Commission has published detailed guidance on how this section applies in various circumstances. See State Ethics Commission Advisory 11-1: Public Employee Political Activity. For present purposes, the following are the most important rules for the Planning Board to keep in mind.

The Planning Board may do any of the following:

- Discuss a ballot question at its own meetings.
- Discuss a ballot question at informational meetings sponsored by an outside group.
- Invite ballot question committees to address its meetings, provided that invitations are made in accordance with a policy of equal access for all viewpoints.
- Vote to take a position on a ballot question.
- Issue an official statement reporting the Board's position on a ballot question; and
- Communicate the Board's official position, using any means normally employed in other circumstances to communicate a Board action (such as posting statements on the Town website, posting the video of the meeting, and publishing minutes of the meeting).

- Use public resources to inform the public about a ballot question, as opposed to using public resources for purposes of advocacy.

The Planning Board may not do any of the following:

- Sign a communication advocating in support of, or in opposition to, a ballot question on behalf of the Planning Board, unless the issuance of such statement is permitted as outlined above.
- Use public resources to distribute communications for purposes of advocacy. This would include a mass mailing, placing an advertisement in the paper, or distributing to voters, directly or indirectly, a flyer concerning a ballot question.

The individual Planning Board Members may do any of the following:

- State their viewpoints and positions on a ballot question.
- Advocate in support of, or in opposition to, a ballot question.
- Identify themselves by their individual official title ("Planning Board Member") on a communication supporting or opposing the ballot question.

The individual Planning Board Members may not do any of the following:

- Use public resources to send communications advocating support of, or opposition to, a ballot question. This includes using any "needhamma.gov" email address to send out communications supporting or opposing a ballot question. Therefore, please send any such communications from a personal account.
- Solicit a vote on a ballot question, directly or indirectly, where such a solicitation is inherently coercive. A solicitation is inherently coercive if it is directed by a public employee at their subordinate, persons doing business with or having a matter pending before their public agency, or anyone subject to their agency's authority.

Please note that the ability to engage in election-related activity varies depending on the position held by a particular municipal employee. This memorandum is directed to the Planning Board and does not cover non-elected employees in Town, including professional staff and appointed board and committee members. Similarly, the letter is limited to the ability of Planning Board Members to participate in activities related to a ballot question, and does not cover other types of election related activity (such as election of political candidates).

If you have any questions, or if I can provide any additional information, please let me know.

From:	Dorina Moriarty
To:	Alexandra Clee
Subject:	LCRA Concerns to Attention of Planning Board-
Date:	Wednesday, November 6, 2024 6:20:19 PM

Greetings to All Planning Board Members,

As per Artie Crocker's advice, here is a brief compilation of our impending concerns that did not get presented at your last October meeting that came to an abrupt conclusion based on a side silent head nod from Justin McCullen down to Paul Alpert.
• It seemed that not only did The Planning Committee move hastily ahead of firstly obtaining The Attorney General's approval, but seemed to be dismissive of stating reference to Attorney General's letter of May 6 2024 to Town of Needham that gave NO approval to:
• Article 41 which indicates 'Authorization of town select board to remove restrictions: TO SEE IF THE TOWN WILL VOTE TO AMEND ITS PRIOR VOTES TO REMOVE THE RESTRICTIONS THAT PROPERTY CONVEYED TO THE NEEDHAM HOUSING AUTHORITY BE LIMITED TO USE AS HOUSING FOR THE ELDERLY, AND TO OTHERWISE LEAVE SAID VOTES UNAMENDED AND IN FULL FORCE AND EFFECT.
[Residents were never polled along with neighbors & abutters]
• Neither Fire Chief Tom Conroy nor fire prevention officer Ronald Gavel actually inspected the site but ONLY LOOKED AT THE PLANS.
• WIDTH OF FIRE LANE Not Mentioned.
According to AFPA the rear fire lane must be 18 ft not 5+.
[Chief claimed to never have discussed 'stay/shelter in place' in case of fire with NHA chairperson]
• Is there enough infrastructure in the soil to withstand multiple story building
• Depth of WATER TABLE & Catch Basins that were increased from 2 to 5. Dan Chan was initially dismissed when volunteering to residents their holding capacity & maintenance plan.
Linden Street slopes down to irrigate Maple St as does the canal.
There was no discussion of demolition according to maintenance men that know the buildings here are filled with asbestos that required extensive elimination
There's No Gain at tearing buildings down-

It's imperative that this be clearly disclosed.
• It was presented to us that building could not be moved up 13 feet as that would minimize amount of units. OUR ARGUMENT: DO WE WANT SAFE UNITS OR COMPRISED ONES BUT MORE OF THEM?!?
FIRE DEPT IS OBLIGATED TO SAVE & PROTECT LIVES.
• FORBID SMOKING ANYWHERE ON THE PREMISES
MASS GENERAL LAWS, CHAPTER 271 - CRIMES AGAINST PUBLIC HEALTH - Environmental Health Protection
(& Emergency response measures)
<According to 'Harvard Women's Health' second hand smoke tolled 7,600 deaths>

• VOID FOR VAGUENESS•
•Relocation modalities to anxious residents not sufficiently disclosed.

Dorina Moriarty
Secretary, LCRA

SECTION 3.6 FIRE PREVENTION

3.6.1 Fire Lanes, and Vehicles Obstructing the Passage of Fire Apparatus

3.6.1.1 Fire Lanes: The Fire Chief shall require public or private fire lanes as deemed necessary for the efficient and effective use of fire apparatus. Such fire lanes shall have a minimum width of 18 feet and shall be designated by pavement markings and/or signs as determined necessary by the Fire Chief. The signs shall say "No Parking - Fire Lane" and the signs and pavement markings shall be maintained in a clean and legible condition at all times by the owner of the property and replaced when necessary to insure adequate visibility. Any person who refuses to post such signs or mark the pavement as ordered by Fire Chief or violates any of the provisions of sub-section 3.6.1 shall be punishable by a fine of not less than ten dollars ($10.00), nor more than fifty dollars ($50.00) for each and every noncompliance or violation.

3.6.1.2 It shall be unlawful to leave an unattended vehicle blocking a private way which furnishes access for fire apparatus

From: Citizen Planner Training Collaborative
To: Alexandra Clee
Subject: CPTC Workshop Series - New Workshop & AICP CM Credit Added!
Date: Monday, November 18, 2024 7:35:16 AM

CPTC Fall/Winter Workshop Series

New Workshop

Site Plan Review has just been added to the list of workshops. This course explains the legal issues when using site plan review; the difference between site plan approval and special permits; the review process; the types of conditions a board may impose; the reasons for disapproval; the appeal process and the types of information a municipality can require to be shown on a site plan.

AICP CM Credits Approved

Four workshops were approved for AICP CM credits. See the list below.

List of Workshops

- ~~**Fair Housing Laws** November 18, 2024, 5:30PM~~ **CM | 1.5**
- **Adopting & Revising Rules & Regulations,** Wednesday, November 20, 2024, 5:30PM
- **Introduction to the Subdivision Control Law & ANR** December 3, 2024, 5:30PM
- **Planning with Community Support** December 4, 2024, 5:30PM **CM | 1.5**
- **Drafting Zoning Amendments,** Thursday, December 5, 2024 5:30PM **CM | 1.5**
- **Roles and Responsibilities of Planning and Zoning Boards** December 17, 2024, 5:30 PM
- **Site Plan Review**, Monday, January 6, 2025, 6:00PM New
- **Special Permits and Variances** January 8, 2025, 5:30PM **CM | 1.5**
- **Writing Reasonable & Defensible Decisions**, Monday, January 13, 2025, 6:00PM

All workshops are presented by professionals with extensive experience in Massachusetts municipal land use policy and law. Workshop sessions are held on Zoom and are about 1 1/2 hours in length. Handouts and written materials are provided where applicable.

Registration is required. The fee is $35. Registration closes 48 hours before the workshop begins. Payment can be made by credit/debit card or check. Checks can arrive after the workshop. Cancelations must must be received at least 48 hours before the workshop begins to receive a refund.

Register Now!

The Citizen Planner Training Collaborative is a nonprofit organization providing training to citizen planners in Massachusetts.

Citizen Planner Training Collaborative | masscptc.org

T O W N O F N E E D H A M
TOWN HALL
Needham, MA 02492-2669

TEL: (781) 455-7500
FAX: (781) 449-4569

Office of the
TOWN MANAGER

November 16, 2024

Local Initiative Program
Executive Office of Housing and Livable Communities (HLC)
100 Cambridge Street, Suite 300
Boston, MA 02114
Attn: Rieko Hayashi

Re: <u>Letter of Support from the Town of Needham</u>
Six Unit Local Initiative Project at 339 Chestnut Street

Dear Local Initiative Program:

I serve as the Chief Executive Officer of the Town of Needham (the "Town"), and I am writing to express the Town's support for the six-unit Local Initiative Project that Needham Enterprises, LLC proposes to construct at 339 Chestnut Street.

339 Chestnut Street is a 6,200 square foot lot with approximately 40 feet of frontage. The lot is currently occupied by a two-story commercial building. Needham Enterprises proposes to raze the existing commercial building, and construct in its place a three-story building containing six residential units (one 1-bedroom unit and five 2-bedroom units). This is a rental project, and two of the new units will be restricted for rental to tenants at or below 80% of AMI. The new units will be supported by eight parking spaces, exterior bicycle storage, recycling and trash collection areas, and a full basement for tenant storage.

339 Chestnut Street is an ideal location for multi-family development. This area of Chestnut Street is a major connecting street with an existing mix of residential and commercial uses, and it is within walking distance of Needham Center and numerous amenities including restaurants, stores, Roche Brothers grocery store, and Beth Isreal Deaconess Hospital. The property is also within walking distance of the Needham Junction MBTA train station.

To further evidence the general suitability of this area for multi-family housing, the Town notes that 339 Chestnut Street and the surrounding lots are included in the multi-family housing overlay district that the Needham Town Meeting recently approved in reaction to M.G.L. c.40A, §3A (the so-called MBTA Communities Act). However, the property does not meet the minimum lot size (10,000 square feet) applicable in the

MBTA overlay district and the underlying zoning district, and by virtue of its nonconforming status cannot be developed as multi-family housing by right or by special permit under the existing zoning.

The area is generally suitable for multi-family housing, and Needham Enterprises' plan set depicts attractive, reasonable and responsible infill housing on this particular site. Needham Enterprises appeared at the Select Board's October 22, 2024 meeting to present the project and, at the conclusion of the presentation and discussion, the Select Board voted to support the LIP application for this six-unit development at 339 Chestnut Street. Based on the foregoing, the Town believes that this project represents an appropriate use of the LIP process and respectfully offers its support for this application to HLC.

Very truly yours,

Kate Fitzpatrick
Town Manager

cc: Select Board
Chris Heep, Town Counsel
Katie King, Deputy Town Manager
Lee Newman, Director of Planning & Community Development
Alison Steinfeld, Community Housing Specialist
Needham Enterprises, LLC