

NEEDHAM PLANNING BOARD

Tuesday, March 2, 2021

7:15 p.m.

Virtual Meeting using Zoom

Meeting ID: **826-5899-3198**

(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: **826-5899-3198**

To view and participate in this virtual meeting on your computer, at the above date and time, go to www.zoom.us click “Join a Meeting” and enter the following ID: **826-5899-3198**

1. De Minimus Change: Major Project Site Plan Special Permit No. 2009-06: Needham Farmer’s Market, Inc., 28 Perrault Road, Apt. #1, Needham, MA 02494 and Town of Needham, 1471 Highland Avenue, Needham, MA, Petitioners. (Property located at 1471 Highland Avenue, Needham, Massachusetts).
2. Public Hearing:

7:30 p.m. 390 Grove Street Definitive Subdivision: Elisabeth Schmidt-Scheuber, 390 Grove Street, Needham, MA, Petitioner, (Property located at 390 Grove Street, Needham, MA). *Please note this is a re-noticed hearing that began on February 4, 2020 and is continued from the July 21, 2020, August 11, 2020, September 8, 2020, November 4, 2020, December 15, 2020, January 19, 2021 and February 2, 2021 Planning Board meetings.*
3. Decision: Amendment to Major Project Site Plan Special Permit No. 1991-3: North Hill Needham, Inc. (formerly known as Living Care Villages of Massachusetts, Inc.), 865 Central Avenue, Needham, MA 02492, Petitioner (Property located at 865 Central Avenue, Needham, MA 02492). *Regarding: proposal to construct 75 new parking spaces along a portion of the existing fire lane, widen the fire lane.*
4. Discussion of proposed dental use in the Center Business District at 32 Chestnut Street.
5. Highway Commercial 1 Rezoning and Planning Study: Project Update.
6. Minutes.
7. Correspondence.
8. Report from Planning Director and Board members.

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

TOWN OF NEEDHAM
MASSACHUSETTS

RECEIVED TOWN CLERK
NEEDHAM, MA 02492

2021 FEB 25 PM 1:25



500 Dedham Avenue
Needham, MA 02492

PLANNING BOARD

APPLICATION FOR DE MINIMUS CHANGES TO SITE PLAN REVIEW SPECIAL PERMIT

APPLICATION NO. 2009-06 (May 20, 2020 Amendment)

Project Determination: (circle one) Major Project Minor Project

This application must be completed, signed, and submitted with the filing fee by the applicant or his representative in accordance with the Planning Board's Rules as adopted under its jurisdiction as a Special Permit Granting Authority. Section 7.4 of the By-Laws.

Location of Property: Garrity's Way and part of Town Common next to central walkway, 1471 Great Plain Avenue, Needham, MA 02492

Applicant's names, addresses, phone numbers: ¹

Needham Farmers Market ("NFM"), 28 Perrault Road, Apt. #1, Needham, MA 02494; 781.241.2037

Applicants are: Owner ☐ Tenant
 Agent/Attorney x ☒ Purchaser

Property Owners' Names, Addresses, Telephone Numbers:

Town of Needham, 1471 Highland Avenue, Needham, MA 02492, tel. 781.455.7500

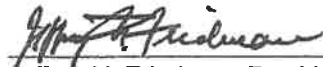
Characteristics of Property: Lot Area 59,221 sq. ft. Present Use: Driveway & parking, Town Common
 Map # 51 Parcel #1
 Zoning District: Center Business

Description of Project for Site Plan Review under Section 7.4 of the Zoning By-Law:

1. The term for a 2021 renewal of NFM's Special Permit will be from June 13, 2021 to November 21, 2021.
2. NFM will have a maximum of two (2) artists per market and live music, as allowed by the Needham Board of Health and the Health Department, pursuant to Governor Baker's Covid-19 related rules.

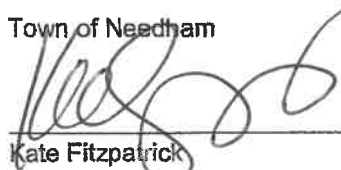
Signature of Applicant (or representative)

Needham Farmers Market

 2/12/21
Jeffrey M. Friedman, President
781.241.2037

Owner's permission if other than applicant:

Town of Needham

 2-25-2021
Kate Fitzpatrick
Town Manager
781.455.7500

SUMMARY OF PLANNING BOARD ACTION

Received by Planning Board _____ Date _____
Hearing Date _____ Parties of Interest Notified of Public Hearing __
Decision Required by _____ Decision/Notices of Decision sent _____
Granted _____
Denied _____ Fee Paid _____ Fee Waived _____
Withdrawn _____

NOTE: Reports on Minor Projects must be issues within 35 days of filing date.

February 12, 2021

Needham Planning Board
PSAB
500 Dedham Ave.
Needham, MA 02492

Re: De Minimus Changes to Special Permit for 2021- Needham Farmers Market
Special Permit, App. No. 2009-06 (amended May 20, 2020)

Dear Planning Board:

The purpose of this letter is to provide the Planning Board with additional information for the Application of Needham Farmers Market (NFM) for de minimus changes to its Special Permit renewed for NFM's 2021 season, as follows:

1. **New Term.** NFM will continue to locate on Garrity's Way and a small portion of the Town Common on Sundays from June 13, 2021 to November 21, 2021. DPW recently notified NFM that the Town Common will not be renovated in 2021, and DPW does not object to NFM's use of part of the Town Common in 2021.

2. **Covid -19 health and safety protocols.** In response to the Covid-19 pandemic, the Massachusetts Dept. of Public Health (DPH) in its April 17, 2020 Order, required health and safety procedures for farmers markets. NFM implemented these at its markets for its vendors, shoppers, and staff. DPH later revised its earlier Order for farmers markets, effective September 8, 2020.

<https://www.mass.gov/guides/covid-19-resources-for-agriculture#-farmers'-markets>.
Thereafter, the Needham Board of Health (BOH) and Needham Health Department determined that NFM complied with the revised DPH Order.

3. On January 5, 2021, NFM Director Lisa Cherbuliez emailed the Health Dept. that NFM would continue with Covid-19 health and safety procedures, mandated under State and BOH rules, at its 2021 markets. Diana Acosta, Health Dept. Environmental Agent, replied: "... it is a good plan to stick with last year's rules for now and we can adjust as get closer to the market if things change." Tara Gurge, Assistant Director of the Health Dept., agreed with this.

4. **Artists and Live Music.** In NFM's earlier Application to Amend Special Permit (dated April 23, 2020), it requested to continue with artists and live music at its markets in 2020. Under the Special Permit, they were allowed at NFM for the previous years at the same location in front of Town Hall.

In early May 2020, pursuant to Governor Baker's Covid-19 shutdown rules, the Health Dept. objected to artists and live music at NFM. For this reason, NFM withdrew these two activities from its 2020 Application. Later in July 2020, Governor Baker revised his Covid-

19 Re-opening rules, and thereafter BOH and the Health Dept. allowed NFM to have two artists at its markets.

Regarding public music performances, Governor Baker revised his Covid-19 related rules in the fall 2020, and thereby BOH allowed live music at NFM. On September 11, 2020, Diana Acosta, for the Health Dept., emailed NFM: "Board [of Health] has agreed to allow for music following these guidelines: <https://www.mass.gov/info-details/safety-standards-and-checklist-theaters-and-performance-venues> .Singing would not be allowed and woodwinds should have protective covers if possible. As a reminder there should be at least 10 feet between performers and there should be at least 25 feet between the band and the customers at the market."

NFM plans to have two artists and live music during its 2021 season, consistent with the above decisions and rules in 2020 by Governor Baker, BOH, and the Health Dept.

5. A License Agreement for 2021 between NFM and the Town of Needham will be filed soon.

6. NFM shall comply with all Needham and State requirements

Needham Farmers Market requests that the Planning Board approve the requested de minimus changes in its Application for renewal of the Special Permit in 2021.

Sincerely,



Jeffrey M. Friedman
President, Needham Farmers Market

RECEIVED
TOWN OF NEEDHAM
SELECT BOARD

2021 FEB 16 A 8:51

February 12, 2021

Sandy Cincotta
Support Services Manager
Town Manager's Office
Town Hall
Needham, MA 02492

Hi Sandy,

Needham Farmers Market is working with the Health Dept. now on our 2021 season, and we are contacting vendors on same.

I have enclosed the Application for De Minimus Changes to the Special Permit for 2021 (with my signature). The Application is for 2021 only. A copy of my signed letter to the Planning Board in support of the Application is also enclosed. After review, could Kate sign the Application and send it to the Planning Dept. and email me a copy?

Could you also send me the License Agreement for 2021? I will sign it, and send it back for Kate's signature. The Planning Board requires this for the updated Special Permit for 2021.

If you have any questions, etc. please contact me.

We greatly appreciate your help.

Thanks,



Jeff Friedman
President, Needham Farmers Market
781.241.2037

**License Agreement
Between
Needham Farmers Market, Inc.
and
The Town of Needham**

This License Agreement is made this 24th day of February, 2021, by and between the Needham Farmers Market Inc., a not for profit corporation, with its principal place of business at 28 Perrault Rd, Apt.1, Needham, MA 02494, (LICENSEE), and the Town of Needham, Massachusetts, a municipal corporation with its usual place of business at 1471 Highland Ave., Needham, MA 02492 (LICENSOR)(collectively, the "Parties").

1. USES

a. In consideration of the full and faithful performance by LICENSEE of all covenants and agreements contained herein and subject to the following terms and conditions, the LICENSOR grants to LICENSEE and LICENSEE takes from the LICENSOR the non-exclusive right to use the paved driveway in front of Town Hall known as Garrity's Way and the small portion of the Town Common beside the central walkway leading to Garrity's Way (together the "Licensed Area") for the purpose of operating a Farmers Market (the "Market") for four (4) hours every Sunday, opening at 12:00 noon and closing at 4:00 p.m., from June 13, 2021 through November 21, 2021. The LICENSEE will be further allowed up to three (3) hours before opening to allow its vendors to set up and up to two (2) hours after closing to break down and clean up.

b. A maximum of thirteen (13) vendors will use booths, tables, canopies or other temporary structures on the Licensed Area. In addition to the vendors there shall be allowed up to five (5) tables, booths or canopies for the Needham Community Farm and/or other Needham-based not for profit organizations, artists, artisans, musicians and the LICENSEE which are to be located solely in the Licensed Area; provided, however, that such not for profit organizations, artists and artisans shall not participate in the Market until authorized to do so by the Needham Health Department.

c. Pursuant to the direction of the Needham Health Department, musical entertainment will be allowed only as defined in the following guidelines: <https://www.mass.gov/info-details/safety-standards-and-checklist-theaters-and-performance-venues> . Singing is not allowed and woodwinds should have protective covers if possible. There should be at least 10 feet between performers and there should be at least 25 feet between the band and the customers at the market during the term of this License Agreement.

d. All trash and waste will be confined to the Licensed Area, and the LICENSEE will be responsible for its removal and cleaning of the Licensed Area before the end of the breakdown time.

e. LICENSEE is responsible to see that the physical layout of the Market is kept within the Licensed Area.

f. LICENSEE will ensure that no public vehicular access to Garrity's Way is allowed

during Market hours. This will be achieved by blocking off the Chapel Street and Highland Avenue entrance/exits with yellow tape, traffic cones or other similar means.

g. LICENSEE is responsible to see that the Licensed Area is used in a lawful manner and in compliance with all laws, by-laws, rules, regulations, permit requirements, orders and directives of any government official, agency or entity of competent jurisdiction. This includes, without limitation, the Order of the Commissioner of Public Health regarding Farmers Markets, Farm Stands and CSAs dated April 27, 2020, and any amendments or modifications thereto (the "Order"), for so long as the Order remains in effect.

h. LICENSEE will not engage in or allow any of its vendors or invitees to engage in any unlawful or dangerous activities that may cause personal injury or physical damage to the Licensed Area.

i. LICENSEE agrees to suspend Market activities in the event that the LICENSOR requires use of the Licensed Area. The LICENSOR will endeavor to provide as much prior notice as possible to the LICENSEE. Except in extraordinary circumstances, the LICENSOR will provide the LICENSEE two weeks' notice of the need for Market activity suspension. The LICENSOR will work with the LICENSEE to attempt to locate an alternative site for the Market during any period of such suspension.

2. PLANS

A plan showing the Licensed Area and the layout to be used for the Market is attached hereto as Exhibit A and is incorporated by reference.

3. TERM OF AGREEMENT

The term of this License Agreement shall be June 13, 2021, through November 21, 2021.

4. FEE

LICENSEE shall pay the LICENSOR the sum of \$25.00 per market day, for each day, payable in advance. LICENSOR reserves the right to terminate this License Agreement if LICENSEE'S payment becomes more than five (5) days overdue.

5. TERMINATION

In addition to the LICENSOR'S right in Paragraph 4 above to terminate for cause, either Party may terminate this License Agreement without cause, effective at the end of each monthly period, upon 30 days written notice to the other Party of its intention and election to terminate.

6. MAINTENANCE

It is agreed the LICENSOR will patch, plow and sweep the Licensed Area as needed and at reasonable times. The LICENSEE shall not permit the Licensed Area to be overloaded, damaged, stripped or defaced, nor suffer any waste. The LICENSEE shall not allow any holes to be made in the Licensed Area.

7. OWNERSHIP OF PROPERTY

It is agreed that the Licensed Area is and shall remain the property of the LICENSOR and the LICENSEE shall not make any improvements on, alter or remove any part of the Licensed Area without the LICENSOR'S express prior written consent.

8. CONDITION OF LICENSED AREA

LICENSEE acknowledges that: a) it has inspected the Licensed Area; b) the Licensed Area shall be available under this License Agreement to LICENSEE and its vendors in an "as is" condition; and c) the LICENSOR makes no representations or warranties as to the condition of the Licensed Area.

9. RISK OF LOSS

LICENSEE agrees to use the Licensed Area at its sole risk. All merchandise, property and effects of the LICENSEE, its vendors, and of all persons claiming by, through or under LICENSEE, which may be on the Licensed Area during the Term of this License Agreement shall be at the sole risk and hazard of the LICENSEE, its vendors, or its invitees. LICENSEE further agrees that the LICENSOR shall not be responsible or liable to LICENSEE, its vendors, or to those claiming by, through or under LICENSEE, for any loss or damage resulting to LICENSEE, its vendors, or those claiming by, through or under LICENSEE or its or their property, that may be occasioned by or through the acts or omissions of persons for whose conduct the LICENSOR is not responsible. The LICENSEE shall be responsible for any damage done to the Licensed Area resulting from the activities allowed by this License Agreement.

10. INSURANCE

LICENSEE and its vendors shall, at their own expense, obtain and maintain general liability and motor vehicle liability insurance policies protecting the LICENSOR and shall have the LICENSOR as an additional named insured on the policies. General liability coverage shall be in the amount of at least \$1,000,000 per occurrence, and \$2,000,000 aggregate for bodily injury liability and property damage liability. Motor vehicle coverage shall include coverage for owned, hired and non-owned vehicles and shall be in the amount of at least \$1,000,000 single limit.

11. INDEMNIFICATION

LICENSEE shall pay, protect, indemnify and save harmless the LICENSOR from and against all liabilities, losses, damages, costs, expenses (including reasonable attorneys' expenses and fees), causes of action, suits, claims, demands or judgments of any nature whatsoever that may be imposed upon or incurred by or asserted against the LICENSOR by reason of any of the following acts occurring or arising during the term of this License Agreement:

- a. Any accident, injury to, or death of any person or damage to property occurring on the Licensed Area or any part thereof in which the negligence of LICENSEE, its employees, any of its employees, vendors or any person acting under color of this license is a causative factor and in which the negligence of the LICENSOR, its employees and agents is not a causative factor; or
- b. Any failure by LICENSEE, its vendors, its employees, or anyone acting under color of this License Agreement to perform or comply with any of the terms hereof or any contracts, agreement, or restrictions, statutes, laws, ordinances or regulations affecting the Licensed Area or any part thereof or the ownership, occupancy or use thereof.

12. NON-ASSIGNABLE

LICENSEE shall not assign this License Agreement or any rights hereunder without the

prior written consent of the LICENSOR.

13. LICENSE ONLY

LICENSEE acknowledges that this is a License Agreement and the rights to use of the licensed area hereunder shall be deemed to be a license only and shall not be construed to be a lease, joint venture, partnership or as evidencing any relationship between LICENSEE and the LICENSOR other than as LICENSEE and LICENSOR. No interest in real property is hereby conveyed by the LICENSOR to the LICENSEE.

14. ENTIRE AGREEMENT

This document, inclusive of Attachment A, forms the entire agreement between the Parties and supercedes all prior arrangements and understandings. Any amendment or modification to this License Agreement must be in writing and signed by an official with the authority to bind the LICENSOR.

15. GOVERNING LAW

This License Agreement and performance hereunder are governed in all respects by the laws of the Commonwealth of Massachusetts and all other applicable by-laws and administrative rules, regulations and orders.

16. CONSENT TO VENUE

The Parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the Dedham District Court located in the County of Norfolk, State of Massachusetts, subject to the Transfer rules of the Norfolk Superior Court. The aforementioned choice of venue is intended by the Parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the Parties with respect to or arising out of this Agreement in any court or forum other than that specified in this paragraph. It is further agreed that the Parties to this Agreement hereby waive their rights to a jury trial.

17. SEVERABILITY

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, such term or condition shall be stricken, and the legality and enforceability of the remaining terms and conditions shall remain in full force and effect.

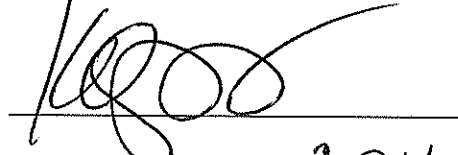
18. EXECUTION IN DUPLICATE

This Agreement may be executed in duplicate, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument which shall represent the agreement of the Parties.

IN WITNESS WHEREOF the Parties hereto have executed two copies of this License Agreement as of the date first above written.

LICENSOR,

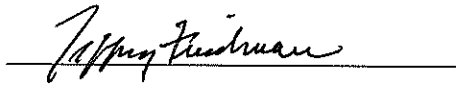
Town of Needham,



By: Town Manager 2-24-2021

LICENSEE,

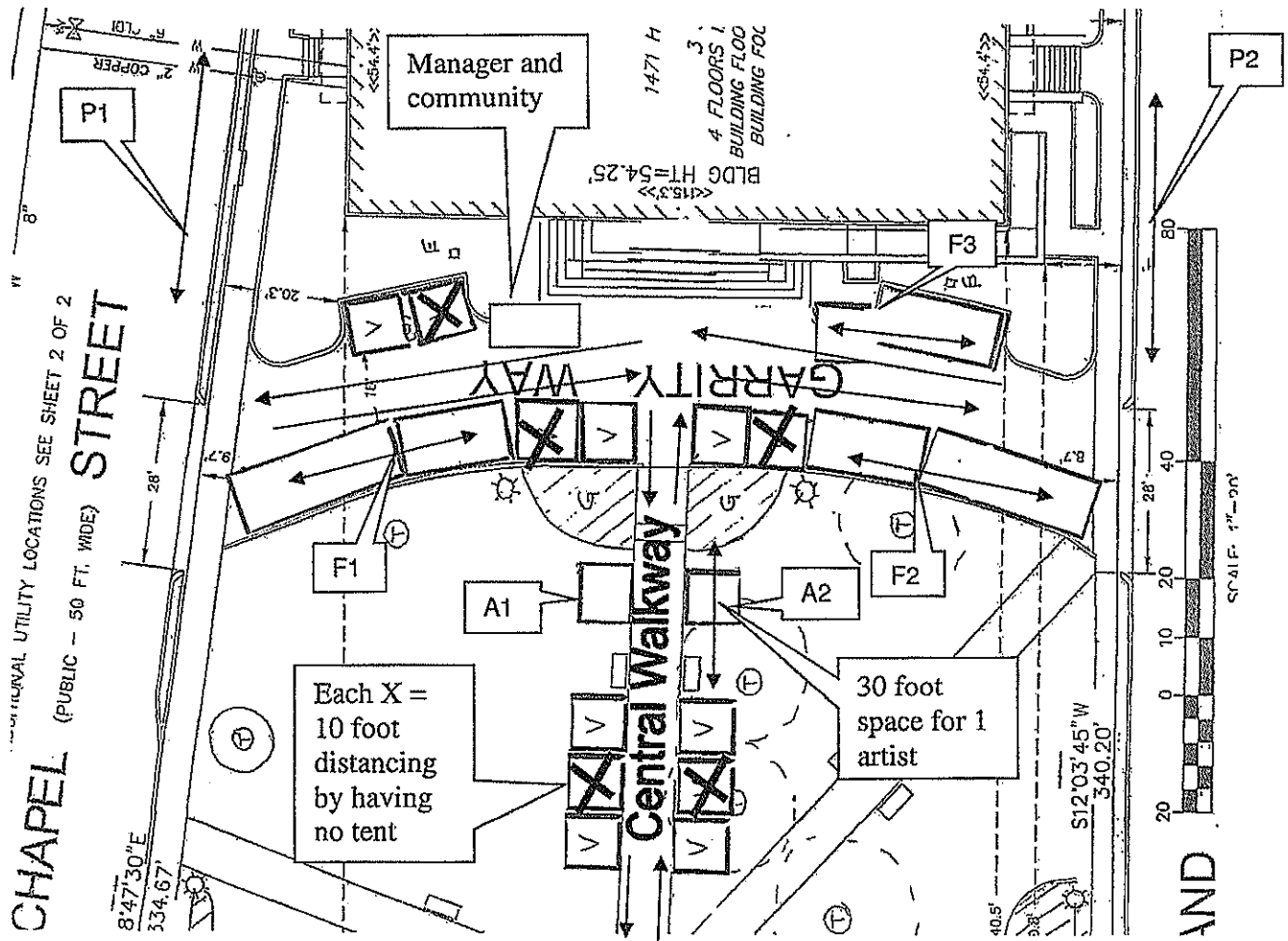
Needham Farmers Market, Inc.

 2/24/21

By: President, Needham Farmers Market, Inc.

Needham Farmers Market 2020

Configuration shown based on current requirements



F1 – MacArthur Farm (produce) F2 – Neighborhood Farm (produce)

F3 – Chestnut Farm (meat)

V – Food Vendors

A1 – Artists (1)

A2 – Artists (1)

Note for A1, A2, we will follow the Governor's designation of vendors for farmers markets and not allow non-essential vendors as pertaining to farmers markets such as in the case of artists until such time as the Governor and the Board of Health allow artists at NFM.

P1 - Proposed temporary parking on Chapel Street for vendors and artists during setup and breakdown

P2 - Proposed temporary parking on Highland Avenue for vendors and artists during setup and breakdown

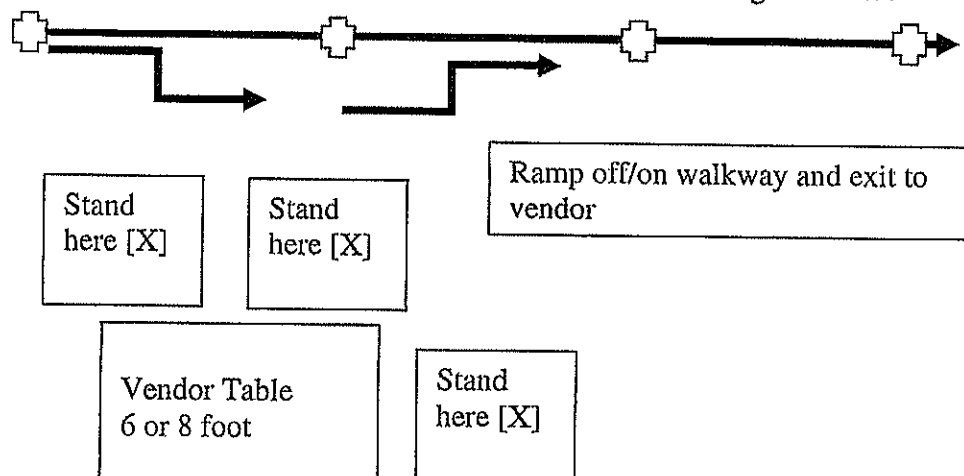
Directional walkways



The Needham Farmers Market will configure to meet the health and safety requirements in effect on the market day.

Detailed Description:

Concept of Directional Walkway Flow, Marked with Social Distancing Indicators



Contactless order fulfillment will be:

1. Vendors will be strongly encouraged to offer online payment such as PayPal, Venmo, square, etc and prepaid ordering.
2. Vendors will have prepaid order pickup at tableside with distancing markers.
3. Vendors will fill orders at table side with customer distancing markers, sanitized card handling, and sanitary cash handling.
4. Vendors will be strongly encouraged to price in whole dollars and eliminate making change as much as possible.

To maintain distancing and density these practices will be in effect

1. The vendors will be arranged to place a 10-foot distance between tents.
2. NFM staff people will monitor the shoppers and advise on distancing and safety.
3. Movement of the shoppers through the market will be organized into walkways and vendor exit ramps. This will be marked by caution tape and signs.

Safety requirements for shoppers will be:

1. Facemasks required on all.
2. No reusable bags
3. 6-foot social distancing.
4. Do not enter the market if sick
5. Adults only.
6. No pets

Safety requirements on vendors will be:

1. Agreement for safe employee behavior such as don't work if sick
2. Employees are masked and gloved.
3. Sanitizer and wipes will be available at all sales tables and equipment kept sanitized.
4. No tablecloths, only hard surface tables that can be cleaned with sanitizer.

Setup Time proposed 9 AM to noon, instead of the prior year's 10 AM - noon

1. Needed to manage the times for safe operation of farm trucks in Garrity way.
2. Needed to place markers and guide signs in the market space for health and safety purposes.

Customer Management

1. Needham Farmers Market staff will help customers move along so as not to linger in groups.
2. Needham Farmers Market staff will monitor density of people in the market and control entry of customers so as to maintain social distancing.

From: [Tara Gurge](#)
To: [Alexandra Clee](#)
Cc: [Lee Newman](#)
Subject: RE: request for comment: Needham Farmers Market - 2021 Special Permit and License Agreement
Date: Friday, February 26, 2021 2:10:58 PM
Attachments: [image002.png](#)
[image003.png](#)

Alex –

We actually just covered this topic RE: the Farmers Market at our February Board of Health meeting, held on February 12, 2021. Here were the BOH's comments, which were taken directly from the minutes. See below –

'Discussion ensued on whether music should be required, and it was the opinion of the Board that a decision on live music will be made closer to the date of commencement and an assessment of COVID-19 precautions.'

Please let me know if you need any additional information from us on that.

Thanks,



TARA E. GURGE, R.S., C.E.H.T., M.S.
ASSISTANT PUBLIC HEALTH DIRECTOR
Needham Public Health Division
Health and Human Services Department
178 Rosemary Street
Needham, MA 02494
Ph- (781) 455-7940; Ext. 211/Fax- (781) 455-7922
Mobile- (781) 883-0127
Email - tgurge@needhamma.gov
Web- www.needhamma.gov/health



please consider the environment before printing this email

STATEMENT OF CONFIDENTIALITY

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[Follow Needham Public Health on Twitter!](#)

From: Alexandra Clee <aclee@needhamma.gov>
Sent: Friday, February 26, 2021 12:01 PM
To: Tara Gurge <TGurge@needhamma.gov>; Anthony DelGaizo <ADelgaizo@needhamma.gov>;

Thomas Ryder <tryder@needhamma.gov>; John Schlittler <JSchlittler@needhamma.gov>; Dennis Condon <DCondon@needhamma.gov>

Cc: Lee Newman <LNewman@needhamma.gov>; Elisa Litchman <elitchman@needhamma.gov>

Subject: request for comment: Needham Farmers Market - 2021 Special Permit and License Agreement

Dear all,

Please review the attached application to allow for the Farmer's Market to be held on the Town Common again for the season. Please provide any comments by Tuesday March 2, 2021. Apologies for the quick turnaround.

Thanks, allex.

Alexandra Clee
Assistant Town Planner
Needham, MA
www.needhamma.gov

From: [John Schlittler](#)
To: [Alexandra Clee](#)
Subject: RE: request for comment: Needham Farmers Market - 2021 Special Permit and License Agreement
Date: Tuesday, March 2, 2021 2:53:45 PM

Police has no issue with this

From: Alexandra Clee <aclee@needhamma.gov>
Sent: Tuesday, March 2, 2021 12:29 PM
To: Anthony DelGaizo <ADelgaizo@needhamma.gov>; Thomas Ryder <tryder@needhamma.gov>; John Schlittler <JSchlittler@needhamma.gov>; Dennis Condon <DCondon@needhamma.gov>; Tara Gurge <TGurge@needhamma.gov>
Cc: Lee Newman <LNewman@needhamma.gov>; Elisa Litchman <elitchman@needhamma.gov>
Subject: Re: request for comment: Needham Farmers Market - 2021 Special Permit and License Agreement

This is a reminder that the Planning Board will be reviewing the Minor Modification application tonight for the Farmers Market. If you wish to comment, please send comments today.

(I have received Health Dept comments).

Thanks, alex.

Alexandra Clee
Assistant Town Planner
Town of Needham
500 Dedham Avenue
Needham, MA 02492
781-455-7550 Ext 271
Needhamma.gov

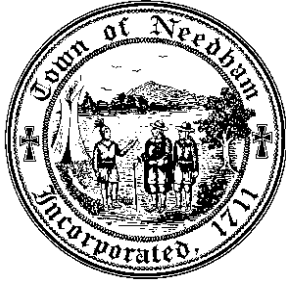
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Cc: Lee Newman <LNewman@needhamma.gov>; Elisa Litchman <elitchman@needhamma.gov>
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Thanks, alex.

Alexandra Clee
Assistant Town Planner
Needham, MA
www.needhamma.gov



**MAJOR PROJECT SITE PLAN REVIEW SPECIAL PERMIT
AMENDMENT TO DECISION
Application No. 2009-06**

**Needham Farmers Market, Inc.
Town of Needham
March 2, 2021**

(Original Decision dated November 17, 2009, amended March 2, 2010, November 16, 2010,
November 16, 2010, June 21, 2011, May 1, 2012, April 25, 2017, May 1, 2018 and May 20, 2020)

(Filed during the Municipal Relief Legislation, Chapter 53 of the Acts of 2020)

DECISION of the Planning Board (hereinafter referred to as the Board) on the petition of Needham Farmers Market, Inc., 28 Perrault Road, Apt. #1, Needham, MA 02494 and Town of Needham, 1471 Highland Avenue, Needham, MA, (hereinafter referred to as the Petitioner) for property located at 1471 Highland Avenue, Needham, Massachusetts. Said property is shown on Assessors Plan No. 51 as Parcel 1 containing 59,221, square feet in the Center Business District.

This Decision is in response to an application submitted to the Board on February 25, 2021, by the Petitioner. The requested Major Project Site Plan Review Special Permit Amendment would, if granted, permit a change to the Special Permit to allow: (1) the continued use of a small portion of the Town Common beside the central walkway leading to Garrity's Way, as shown on the diagram submitted with the application from the prior amendment (dated May 20, 2020) and referenced as Exhibit 4 herein and the continuation of prior conditions except as amended herein; (2) allowance of two artists and live music, consistent with any and all regulations regarding Covid as determined by the Board of Health; and (3) renewal of Special Permit No. 2009-06 by the Board from June 13, 2021 through November 21, 2021 as amended herein.

The changes requested are deemed minor in nature and extent and do not require a public notice or a public hearing. Testimony and documentary evidence were presented to the Board on March 2, 2021 via remote meeting using Zoom ID 826-5899-3198. Board members Jeanne S. McKnight, Paul S. Alpert, Martin Jacobs, Adam Block and Ted Owens were present throughout the proceedings. Testimony and documentary evidence were presented, and the Board took action on the matter.

EVIDENCE

Submitted for the Board's review are the following exhibits:

- Exhibit 1 Application for Amendment to Major Project Site Plan Special Permit 2009-06, dated February 25, 2021.
- Exhibit 2 Letter from Jeffrey Friedman, President, Needham Farmers Market, Inc., to the Needham Planning Board, dated February 12, 2021.
- Exhibit 3 Letter from Jeffrey Friedman, President, Needham Farmers Market, Inc., to Sandy Cincotta, Town Managers Office, dated February 12, 2021.
- Exhibit 4 Plan showing depiction of location of vendors on Garrity's Way, titled "Needham Farmers Market, 2020, Configuration shown based on Current Requirements" May 12, 2020, with proposed actions/steps to meet Health Dept. standards.
- Exhibit 5 Order of the Commissioner of Public Health for Farmers Markets, Farm Stands and CSAs, dated September 8, 2020.
- Exhibit 6 Massachusetts Department of Agricultural Resources Bulletin: 2020-05, "Farmers Markets, Farm Stands, & CSAs Guidance Memo #5, Considerations for Fruits and Vegetable Growers Related for Coronavirus and COVID-19."
- Exhibit 7 License Agreement between the Needham Farmers Market Inc., a not for profit corporation, with its principal place of business at 28 Perrault Rd, Apt. 1, Needham, MA 02494, (Licensee), and the Town of Needham, Massachusetts, a municipal corporation with its usual place of business at 1471 Highland Ave., Needham, MA 02492 (Licensor), dated February 24, 2021.
- Exhibit 8 Interdepartmental Communications (IDC) to the Board from John Schlittler, Chief of Police, Needham Police Department, dated February xx, 2021; Thomas Ryder, Assistant Town Engineer, dated February xx, 2021; IDC to the Board from Dennis Condon, Chief of Department, Needham Fire Department, dated February xx, 2021; and IDC to the Board from Tara E. Gurge, Assistant Public Health Director, dated February 26, 2021.

FINDINGS AND CONCLUSIONS

The findings and conclusions made in Major Project Site Plan Special Permit No. 2009-06, dated November 17, 2009, amended March 2, 2010, November 16, 2010, November 16, 2010, June 21, 2011, May 1, 2012, April 25, 2017, May 1, 2018 and May 20, 2020 were ratified and confirmed except as follows:

1. The Board hereby approves the proposed changes: 1) the continued use of a small portion of Town Common beside the central walkway leading to Garrity's Way, as shown on the diagram submitted with the application from the prior amendment (dated May 20, 2020) and referenced as Exhibit 4 herein and the continuation of prior conditions except as amended herein; (2) allowance of two artists and live music, consistent with any and all regulations regarding Covid as determined by the Board of Health; and (3) renewal of Special Permit No. 2009-06 by the Board from June 13, 2021 through November 21, 2021.
2. The Board hereby approves the renewal of Special Permit No. 2009-06 from June 13, 2021 through November 21, 2021. The Board is in receipt of an executed License Agreement dated February 24, 2021 between the Town and Needham Farmers Market (Exhibit 7) permitting such use as authorized herein during the noted time period.

3. The Needham Farmers Market shall work with the Parks and Forestry Department to ensure the protection of the grass in the Town Common. Currently, the Town Common is expected to be renovated in 2022. Therefore, the Petitioner is only requesting the use of the Common for the season of 2021. Future use will require future consideration.
4. Farmers Markets are considered to be Essential Services, under the Governor's order during Covid-19 Emergency that all non-essential businesses be closed. The Needham Farmers Market commits to taking all precautions as prescribed by law in effect. Specifically, the Needham Farmers Market and its Managers commit to following the legal recommendations of the Order of the Commissioner of Public Health for Farmers Markets (Exhibit 5) and the recommendations of the MDAR Bulletin (Exhibit 6), both as implemented by the Needham Health Department, and to further supervise all vendors and artists in following the recommendations of that Order and Bulletin.
5. Live music and two artists are permitted at the Farmers Market, as long as any rules and regulations of Governor Baker and the Needham Board of Health allow it. Needham Farmers Market will comply with all local and state requirements.
6. The proposed changes are deemed minor in nature and do not require public notice of a hearing.

PLAN MODIFICATIONS

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

1. No Plan Modifications.

DECISION

NOW THEREFORE, the Board voted 5-0 that:

1. The proposed changes are deemed minor in nature and do not require a public notice or public hearing. No 20-day appeal period from this Amendment of Decision is required.
2. The requested modifications are granted.
3. The Board hereby approves the renewal of Special Permit No. 2009-06 from June 13, 2021 through November 21, 2021.
4. The Needham Farmers Market shall work with the Parks and Forestry Department to ensure the protection of the grass in the Town Common. Only use of the Common for the season of 2021 is herein authorized. Future use will require future consideration.

5. The Needham Farmers Market shall take all precautions as prescribed by law in effect. Specifically, the Needham Farmers Market and its Managers shall follow the legal recommendations of the Order of the Commissioner of Public Health for Farmers Markets (Exhibit 5) and the recommendations of the MDAR Bulletin (Exhibit 6), both as implemented by the Needham Health Department, and shall further supervise all vendors and artists in following the recommendations of said Order and Bulletin.
6. Live music and two artists are permitted at the Farmers Market, as long as any rules and regulations of Governor Baker and the Needham Board of Health allow it. The Needham Farmers Market shall comply with all local and state requirements.

Witness our hands this 2nd day of March, 2021.

NEEDHAM PLANNING BOARD

Jeanne S. McKnight, Chairperson

Paul S. Alpert

Ted Owens

Martin Jacobs

Adam Block

Copy sent to:

Petitioner – Certified Mail #
Town Clerk
Building Inspector
Director, PWD
Board of Health
Conservation Commission
Design Review Board
Select Board
Engineering
Fire Department
Police Department
Jeffrey M. Friedman
Parties In Interest

George Giunta, Jr.
ATTORNEY AT LAW*
281 Chestnut Street
Needham, MASSACHUSETTS 02492
*Also admitted in Maryland

TELEPHONE (781) 449-4520

FAX (781) 449-8475

March 2, 2021

Lee Newman
Planning Director
Town of Needham
1471 Highland Avenue
Needham, MA 02492

VIA EMAIL: LNewman@needhamma.gov

Re: Definitive Subdivision Application
Elisabeth Schmidt-Scheuber
390 Grove Street

Dear Lee,

In connection with the above referenced definitive subdivision application, please be advised that as of last night, the applicant / owner and the neighbors have come to an agreement concerning the property. In order to effectuate such agreement, the parties have agreed to temporarily suspend the pending subdivision proceedings. Therefore, please accept this letter as a joint request to further continue the hearing, and the vote, on the Definitive Subdivision Application for 390 Grove Street until the April 20, 2021 meeting of the Board.

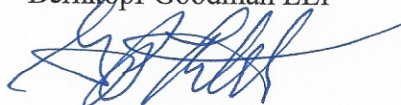
In connection with the foregoing, please also further extend the applicable action deadline until May 31, 2021.

Sincerely,



George Giunta, Jr

Agreed and assented
Bernkopf Goodman LLP



By: Gary P. Lilienthal, of counsel



J. Raymond Miyares Thomas J. Harrington Christopher H. Heep Donna M. Brewer Jennie M. Merrill
Rebekah Lacey Bryan Bertram Ivria Glass Fried Alexandra B. Rubin Ethan B. Dively Maurica D. Miller Rian Rossetti

February 26, 2021

Needham Planning Board
500 Dedham Avenue
Public Services Administration Building, Suite 118
Needham, MA 02492

Re: 390 Grove Street—Application for Approval of Definitive Subdivision

Dear Planning Board Members:

You have requested an opinion regarding the proposed two-lot definitive subdivision located at 390 Grove Street (the “Property”). In particular, you have asked me review and comment on arguments that have been presented during the public hearing concerning parcels labeled as “not buildable” on the plan, and whether one of the building lots shown on the plan—Lot 1—must be considered a “corner lot” within the meaning of the Zoning By-Law. Based on my review, I do not detect any issues that would require disapproval of the definitive subdivision plan.

In addition to the proposed definitive subdivision plan, I have reviewed and considered the following:

- Letter from Gary P. Lilienthal, counsel to abutters James Curley, Domenic Colosacco and Robert Badavas (the “Abutters”), to the Planning Board dated November 23, 2020;
- Letter from George Giunta, Jr., counsel to the applicant, to Lee Newman, Planning Director, dated January 14, 2021;
- Letter from George P. Lilienthal to the Planning Board dated January 28, 2021; and
- Letter from George P. Lilienthal to the Planning Board dated February 18, 2021.

The Property is located in the Single Residence A District and presently consists of one lot containing 230,809 square feet, with frontage on Grove Street. The Property is improved with a single-family home. The Applicant proposes to subdivide the Property into two lots, Lot 1 and Lot 2 (containing 47,809 square feet and 56,521 square feet, respectively), and three non-buildable parcels, Parcel A, Parcel B, and Parcel C. The existing single-family home will be demolished; one single-family home is expected to be constructed on Lot 1, and one single-family home is expected to be constructed on Lot 2. Parcel A and Parcel B are to be held by a homeowner’s association or

trust for the benefit of the owners of Lots 1 and 2. Parcel C is to be conveyed to the Town, as it consists of vegetated wetlands and abuts Town conservation land.

In the correspondence noted above, the Abutters, through counsel, oppose the subdivision on the ground that Lot 1 is a “corner lot”, and does not contain the minimum required lot width pursuant to Section 4.1.5 of the Zoning By-law as measured from Grove Street. Section 1.3 of the Needham Zoning By-law defines “corner lot” as “a lot at the point of intersection of, and abutting on, two or more intersecting streets, the angle of intersection of the street lines or, in the case of a curved street, street lines extended, being not more than one hundred and thirty-five (135) degrees.”

The minimum required lot width for building lots in the Single Residence A District is 120 feet. To measure lot width, Section 4.1.5 provides, in relevant part, the following:

To measure lot width, start at a front corner (where a sideline meets the lot’s line of frontage) and, at a right angle to that sideline, measure straight across the lot to the other sideline. This measurement need not be at a right angle from more than one sideline, but it must cross the lot to meet the opposite sideline. Then take a series of measurements parallel to that first measured line, through the full depth of the primary building or structure on the lot.

However, relative to corner lots, Section 4.1.5 provides that the measurement “shall be taken from front corners along both frontage lines.” Lot 1’s width is 281.71 feet as measured along the new subdivision road. Lot 1’s lot width, if it were to extend all the way to Grove Street, would be less than 120 feet.

Lot 1 does not touch Grove Street at any point. The definitive subdivision plan shows Parcel B located between Grove Street and Lot 1. Parcel B is labeled as “not buildable” on the subdivision plan, and it will contain a subsurface infiltration system that is intended to capture drainage from the new private subdivision road. I understand that Parcel B will be conveyed to a homeowners’ association or trust for the benefit of Lot 1 and Lot 2.

There is no general rule that prohibits the creation of non-buildable parcels on a definitive subdivision plan or ANR plan. See *Well-Built Homes, Inc. v. Shuster*, 64 Mass. App. Ct. 619 (2005) (“The resulting definitive subdivision plan now contained fifteen numbered buildable lots, plus Parcel A...designated as unbuildable.”); *J.A. Taylor Const. Co., Inc. v. Northbridge Planning Bd.*, Mass. Land Ct. March 6, 2008 (2008 WL 598417) (noting definitive subdivision plan proposed to create both buildable and unbuildable lots); *Merganser Realty Trust v. Ferragamo*, Mass. Land Ct. June 23, 1994 (1994 WL 16193863) (noting that where the failure of one lot to comply with frontage

requirements was the only issue presented on a definitive subdivision plan: “I assume it could be remedied (if only by designating Lot 15 as unbuildable).”)

The Abutters argue that Parcel B is being created exclusively to avoid application of the minimum 120' lot width requirement to Lot 1, as measured from Grove Street. Based on this concern, the Abutters argue that Lot 1 effectively abuts Grove Street and must therefore be considered a “corner lot”, notwithstanding intervening Parcel B. The Abutters cite a number of cases from out-of-state jurisdictions and other regulatory contexts in support of the argument that Lot 1 does not need to “touch upon” Grove Street in order to be considered “abutting on” Grove Street. Their assertion is that Parcel B does not create a true barrier between Lot 1 and Grove Street because it will contain a drainage system benefitting (in part) Lot 1. Given that the creation of non-buildable parcels has been noted without controversy in Massachusetts zoning and subdivision jurisprudence, I am reluctant to assign weight to the cases that the Abutters cite from other jurisdictions, and other contexts.

The only Massachusetts case the Abutters cite to support their position, *Orcutt v. Board of Health for Town of Webster*, 2007 WL 756595 (Super. Ct. 2007), is not directly on point or controlling in this situation. *Orcutt* dealt with the interpretation of “abut” in the context of Board of Health regulations requiring connection to the public sewer. The Superior Court concluded that the local Board of Health has reasonably classified a lot as abutting the public way where an easement for a driveway connected to the public way. *Orcutt*, 2007 WL 756595. The judge acknowledged that, “while other courts have defined the term ‘abut’ differently in various contexts, in light of the facts and circumstances of this case” and the intent of the applicable statute, the Board of Health’s classification of the plaintiffs as abutters was reasonable. *Id.* at *2. The decision in *Orcutt* was applicable to the facts and circumstances of that case, and concerned a different statutory scheme (M.G.L. c.83, §11, which authorizes board of health to “require an owner or occupant of any building upon land abutting on a public way, in which there is a common sewer, to connect the same therewith.”). It does not compel the conclusion that Lot 1 abuts Grove Street, notwithstanding the existence of an intervening lot. A notable distinction between *Orcutt* and the proposed subdivision is that in *Orcutt*, the plaintiff’s property was deemed to have frontage on the public way as the driveway connected the property to the public way and the address for the property was on the public way. Here, the proposed subdivision includes a private way serving access to Lot 1, and Lot 1’s frontage is exclusively on the private way. Notably, Section 1.3 of the Zoning By-law provides that “no lot shall be required to have frontage on more than one way.”

I have not identified any direct authority that prohibits the applicant from creating Parcel B as shown on the definitive plan, and the Abutters cite none. In the absence of such authority, in my opinion Lot 1 does not abut Grove Street, and is not a “corner lot” within the meaning of the Zoning By-law.

Section 3.4.2 of the Subdivision Regulations states, in part, “[n]o subdivision shall be approved, unless it complies with these Rules and Regulations and with applicable provisions of the Zoning and other Town By-Laws and regulations and of the General Laws of the Commonwealth of Massachusetts...” As noted above, I believe the proposed plan complies with the Zoning By-law insofar as Parcel B, which does not satisfy the minimum lot size requirement, has been labeled “non-buildable” and is clearly not available for construction of a dwelling. Nonetheless, I do not believe it necessary for the Board to make a specific finding in support an approval that each lot within the subdivision complies with all provisions of the Zoning By-law.

Please let me know if you have any further questions or if I can provide any additional information.

Sincerely,



Christopher H. Heep

February 18, 2021

GARY P. LILIENTHAL

DIRECT DIAL: (617) 790-3360

E-MAIL: GLILIENTHAL@BG-LLP.COM

*Via Email: aclee@needhamma.gov;
LNewman@needhamma.gov and First Class Mail*

*Via Email: cheep@miyares-harrington.com
and First Class Mail*

Needham Planning Board
Ms. Alexandra Clee, Assistant Town Planner
Ms. Lee Newman, Director of Planning and
Community Development
Town of Needham
Planning and Community Development Department
500 Dedham Avenue
Public Services Administration Building, Suite 118
Needham, MA 02492

Christopher H. Heep, Esq.
Miyares and Harrington LLP
40 Grove Street, Suite 190
Wellesley, MA 02482

Re: Application (the “Application”) to the Needham Planning Board (the “Board”) by
Elisabeth Schmidt-Scheuber (the “Applicant”) to subdivide land into a two-lot
subdivision at 390 Grove Street, Needham, Massachusetts (the “Property”)

Dear Members of the Board and Attorney Heep:

Bernkopf Goodman LLP submits this letter to you (as Needham town counsel) on behalf of its clients, James Curley of 380 Grove Street, Robert Badavas of 402 Grove Street and Domenic Colasacco of 426 Grove Street (together, “Abutters”). This letter shall serve as a supplement to Abutters’ formal opposition previously submitted to the Board to Elisabeth Schmidt-Scheuber’s (the “Applicant”) Definitive Subdivision Application (the “Application”) in connection with the proposed two-lot subdivision (“Proposed Subdivision”) located at 390 Grove Street, Needham, Massachusetts (the “Property”). In particular, this letter will address whether the Applicant has submitted a “by-right” plan and, consequently, whether the Board has the discretion to approve the Proposed Subdivision (with or without waivers). As discussed below, the answer is no. The Proposed Subdivision and in particular Lot 1 – a “corner lot” as defined in the Bylaws – lacks adequate lot width and, therefore, the Proposed Subdivision would violate the Bylaws if approved by the Board. Under the circumstances, the Board lacks discretion to approve the Proposed Subdivision, and the Proposed Subdivision should be rejected on these grounds alone.

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I. Summary

The Application, as submitted, should be disapproved as the Proposed Subdivision violates the “Zoning By-Law of Town of Needham” (the “Bylaws”), G.L. c. 41 (the “Subdivision Control Law”) and the Town of Needham “Subdivision Regulations and Procedural Rules of the Planning Board” (the “Rules and Regulations”). Specifically, the Proposed Subdivision lacks adequate lot width in violation of Sections 4.2.3 and 4.1.5 of the Bylaws.

The Applicant’s attorney has admitted on the record that a “by right” plan must be presented as a condition precedent to approval of the Proposed Subdivision and waivers requested thereon. However, the Application has been pending for more than one year and the Applicant has to date failed to present a “by right” plan because of inadequate lot width. Approving the Proposed Subdivision under these circumstances would violate the Subdivision Control Law and should be rejected as a matter of law.

Approving the Proposed Subdivision in this instance would also set a dangerous precedent whereby any applicant could sidestep the Bylaws, Rules and Regulations and Subdivision Control Law solely to enhance his or her property value to the detriment of abutters and the public. Indeed, such a precedent could encourage more two-lot subdivisions on narrow lots in well-established and mature neighborhoods in Needham and could threaten the bucolic character of one of Needham’s most important and historic neighborhoods. No such written precedent has been set in any decision by the Board to date.

II. Background

The Applicant seeks to subdivide the Property – a narrow lot upon which a single-family residence sits in a well-established residential neighborhood on Grove Street– into two buildable lots with two single family residences, and to construct a non-compliant private way off Grove Street ending at a turnaround. As detailed below, however, the Applicant has failed, despite eight different revisions to the Plan Set, to present a real and complete “by right” plan for the Proposed Subdivision demonstrating, as required by the Planning Board’s procedure, that the Proposed Subdivision could be developed consistent with the law without the requested waivers.

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III. Legal Framework

At the last hearing on this matter, Chair McKnight stated that she was uncertain about whether the Board was obligated to assess the lot width and area requirements of a particular lot as part of the Board's review under the Subdivision Control Law. Compliance with the Bylaws and Rules and Regulations is paramount to any municipal authority's review of a subdivision. In fact, a primary purpose of the Subdivision Control Law is to ensure that proposed lots meet the applicable zoning regulations. *Dupuy v. Ehnstrom*, 2009 WL 1244417, 5 (Mass. Land Ct. 2009) ("The purpose of the subdivision process is to determine whether the proposed lots meet the requirements of zoning such that the definitive plan qualifies for endorsement"). This purpose is evident in the plain language of Section 81M, which provides: "The powers of a planning board ... under the subdivision control law, shall be exercised with due regard ... for insuring compliance with the applicable zoning ordinances or by-laws..." The Massachusetts Supreme Judicial Court further emphasized this purpose in *Doliner v. Planning Board of Millis*, 343 Mass 1, 6 (1961), by concluding that: "... the planning board seems to be expected under § 81M to require compliance with any applicable zoning by-law as well as with any rules and regulations of its own."

Section 81Q of the Subdivision Control Law also authorizes municipal authorities to condition subdivision approval on the "size, shape, width, frontage or use of lots within a subdivision..." Consistent with the dictates of the Subdivision Control Law, Section 3.4.2 of the Rules and Regulations requires compliance as a condition precedent to subdivision approval:

No subdivision shall be approved, unless it complies with these Rules and Regulations and with applicable provisions of the Zoning and other Town By-Laws and regulations and of the General Laws of the Commonwealth of Massachusetts... Proposed subdivisions shall conform, so far as conditions permit, to overall development plans adopted by the Planning Board, if any, and shall adhere to the principles of correct land use, sound planning and good engineering.

Further, it is noteworthy that the Subdivision Control Law states that the subdivision process is designed to create "lots." Specifically, Section 81L of the Subdivision Control Law defines "lots" as parcels of land upon which buildings can be placed. Therefore, the Board's review process includes ensuring that each lot identified on a plan has the area, frontage and width to comply with the Bylaws and Rules and Regulations.

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Consequently, where, as here, a proposed subdivision fails to meet the Bylaws or Rules and Regulations, it must be disapproved. *See Arrigo v. Planning Bd. of Franklin*, 12 Mass. App. Ct. 802, 806 (1981) (analyzing subdivision in the context of whether town “had a rule or regulation requiring compliance with the frontage requirement of the zoning by-law and no other violation of the board’s rules and regulations has been suggested”).

IV. Rules of Interpretation

The Proposed Subdivision is governed by Section 81M of the Subdivision Control Law and Section 3.4.2 of the Rules and Regulations. With respect to “corner lots,” Section 4.1.5 of the Bylaws requires lot width of 120 feet which must be measured from both frontage lines. It is undisputed that Lot 1 – if it falls within the definition of a “corner lot” – fails to meet lot width requirements when measured from the Grove Street frontage.

Applicant’s attorney contends that the existence of parcel B – a non-buildable lot that serves no purpose other than to evade the requirements of the Bylaws – serves as a “buffer” from Grove Street and alters the character Lot 1 so that it no longer fits within the definition of “corner lot.” Applicant admits that the sole reason Applicant created parcel B was to evade the Bylaws’ lot width requirements.

The Bylaws define a “corner lot” as a “lot at the point of intersection of, and abutting on, two or more intersecting streets...” Thus, the critical question is what constitutes a lot “abutting on” two or more intersecting streets? The answer is that a lot “abuts on” a street when there is no intervening land which may be put to private use. Parcel B cannot and, indeed, was not intended to be put to private use. Therefore, Lot 1 is a “corner lot” because, except for Applicant’s deliberate acts of evasion in creating parcel B for no private use, it “abuts on” Grove Street and the Subdivision’s proposed private way.

The conclusion that Lot 1 is a “corner lot” regardless of the existence of parcel B as a fictional buffer to Grove Street is supported in full by “ordinary principles of statutory construction.” *See Framingham Clinic, Inc. v. Zoning Bd. of Appeals of Framingham*, 382 Mass. 283, 290 (1981). The classic statement of rules of interpretation is, as follows:

The general and familiar rule is that a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary

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and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of the framers may be effectuated.

Hanlon v. Hanlon, 286 Mass. 444, 447 (1932). The duty to ascertain the intent of the legislative body is so central to the principles of statutory construction that a court is required to disregard the plain and unambiguous meaning of words used in a statute when a literal interpretation of the words would defeat the intention of the legislature, *see Holbrook v. Holbrook*, 18 Mass. (1 Pick.) 246, 250 (1822), render other provisions of the statute meaningless, *Fleming v. Contributory Retirement Appeal Board*, 431 Mass. 374 (2000), or produce absurd results. *See Attorney General v. School Committee of Essex*, 387 Mass. 326, 336-337 (1982); *see also Lehan v. North Main Street Garage*, 312 Mass. 547, 550 (1942) (“If a liberal, even if not literally exact interpretation, of certain words is necessary to accomplish the purpose indicated by the words as a whole, such interpretation is to be adopted rather than one which will defeat that purpose”).

V. Lot 1 ‘Abuts On’ Grove Street

To the extent that the Applicant contends that the existence of parcel B alters Lot 1’s character as a corner lot, that contention is wrong. Parcel B is a 8,618 square foot strip of land between Grove Street and Lot 1, but it provides nothing more than a fictional buffer from Grove Street. Parcel B is no different than a sidewalk in this regard and, notwithstanding the Applicant’s gerrymandering efforts, has no impact on Lot 1’s characterization as a corner lot. Rather, the facts are clear that the creation of parcel B serves no purpose which cannot be accomplished without needing or creating parcel B. Indeed, parcel B is designed solely to create a fictitious buffer between Lot 1 and Grove Street.

As stated above, the Bylaws define a “corner lot” as a “lot at the point of intersection of, and abutting on, two or more intersecting streets...” However, “abutting on” is not defined in the Bylaws. In the absence of an express statutory definition, the meaning of the word becomes a question of law, and ordinary rules of statutory construction are to be applied. *Framingham Clinic, Inc. v. Zoning Board of Appeals of Framingham*, 382 Mass. 283, 290 (1981). The term must be read in the context of the Bylaws as a whole, giving it its “common” “approved” and “usual” meanings “from sources presumably known to the [bylaw’s] enactors, such as [its] ... use in other legal contexts and dictionary definitions.” *Id.*

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The term “abut” is generally understood to mean that there is no intervening land which may be put to private use. *See Aquino v. United Prop. & Cas. Co.*, 483 Mass. 820, 840 (2020) (holding, in the insurance context, that a structure abutted another where it “appears to have a seamless connection” thereto); *City of Shreveport v. Selber*, 21 So. 2d 738, 742 (La. Ct. App. 1945) (“In cases of this character to abut means that there intervenes no other land that may be put to private use”).¹ To qualify as an abutter, the land in question does not need to touch upon or directly contact each other. *People ex rel. Whittock v. Willison*, 237 Ill. 584, 591 (1908), *quoting Richards v. City of Cincinnati*, 31 Ohio St. 506 (“[t]he word ‘abutting’ means joined to or adjoining, but does not necessarily imply that the things spoken of are in contact”). The critical question is whether the properties are separated by other property which could be put to a private use, such as a public street or public alley. *Homac Corp. v. Sun Oil Co.*, 137 Misc. 551, 553, 244 N.Y.S. 51 (N.Y. Sup. Ct. 1930).

Under the Application, the only use of parcel B is for a drainage easement associated with Lot 1 and the Subdivision. Even then, the drainage system depends on Lot 1 for drainage management as well. There is no distinct use for parcel B. *Compare, DiStefano v. Town of Stoughton*, 36 Mass. App. Ct. 642, 645 (1994) (rejecting, under the doctrine of merger, “checkerboard” conveyances designed to evade bylaws). Additionally, there is no need or purpose for creating a separate parcel in order to establish the easement created in this case. Rather, the created easement makes parcel B subservient to Lot 1 and, therefore, part of Lot 1. Under the well-established meaning of “abutting on,” parcel B does not create a true barrier and Lot 1, therefore, “abuts on” Grove Street.

At least one Massachusetts case has addressed this issue and concluded that “abutting on” does not require that the subject properties touch. In *Orcutt v. Bd. of Health for Town of Webster*, 2007 WL 756595, 2 (Mass. Super. 2007), the court held that a property “abutted” a public way for purposes of requiring sewer connections because, even though the subject property did not technically adjoin the public way, the property benefitted from an easement which connected the two and, therefore, in substance, if not form, the property “abutted” the public way. The analogy between this case and the Application is clear. Parcel B serves no independent purpose and, to

¹ Applicant’s attorney has erroneously contended that a “corner lot” requires frontage on two ways. First, the definition of corner lot in the Bylaws contains no reference to “frontage.” Given that “frontage” is a defined term in the Bylaws, the omission of the term from the definition of corner lot must be deemed intentional and, from an interpretive perspective, supports that frontage is not a requirement. Second, the definition of “frontage” references corner lots and states specifically that “[n]o lot shall be required to have frontage on more than one way.” In other words, neither a corner lot nor any other lot is required to have frontage on two ways.

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the contrary, contains an irrigation system that will serve Lot 1. Lot 1 will possess a beneficial ownership interest in parcel B, thereby further diminishing the legal artifice designed by Applicant. Lot 1 “abuts” Grove Street even if it does not technically adjoin it.

Determining that Lot 1 is a “corner lot” is also consistent with the intent of the Bylaws. *See Duracraft Corp. v. Holmes Products Corp.*, 427 Mass. 156, 163 n. 11 (1998) (statutes should be interpreted “not alone according to their simple, literal or strict verbal meaning, but in accord with the spirit and intent of the legislation”). The purpose of the Bylaws’ lot width requirements is to ensure to the greatest extent possible uniformity in lot size and shape on corner lots. Parcel B provides no barrier between Lot 1 and Grove Street and to all passersby the residence constructed on Lot 1 will appear to adjoin Grove Street – just on a too-narrow parcel. This Application undermines the purpose, spirit and intent of the Bylaws’ corner lot width requirements.

Interpreting Lot 1 as a “corner lot” would also avoid absurd results in this case and in the future. *See Green v. Bd. of Appeal of Norwood*, 358 Mass. 253, 258 (1970) (by-laws should not be so interpreted as to cause absurd or unreasonable results when the language is susceptible of a sensible meaning). If Applicant can avoid designation as a “corner lot” so easily, any property owner would be free to evade the “corner lot” designation and the Bylaws’ dimensional requirements, by adding a fictional sliver parcel as a buffer. This would defeat the entire purpose of the “corner lot” requirements and render the Bylaws’ requirements in that regard entirely meaningless and ineffective. As a matter of statutory interpretation, such a result is legally impermissible. *See Adamowicz v. Town of Ipswich*, 395 Mass. 757, 760 (1985) (Nor do we interpret a statute to render it or any portion of it meaningless).

Moreover, the Abutters are concerned that in trying to use the Board’s decision approving a subdivision on Heather Lane as precedent in this application, the Applicant has demonstrated the danger of the Board allowing the creation of fictitious parcels, or similar subterfuges as precedent for the avoidance of important provisions of By-Laws in the future. Putting aside that Heather Lane is distinguishable on many levels, Heather Lane is not binding precedent that restricts the Board in any way. *See Goldman v. Planning Bd. of Burlington*, 347 Mass. 320, 325 (1964) (“if the board thinks a mistake has been made, it may not be forced to repeat and enhance the effect of the mistake when a different plan is submitted”). By approving this subdivision based upon the creation of a parcel to keep a lot from being a corner lot, which Applicant’s attorney readily admitted in a previous hearing, the Board would be sending a message to future developers and applicants that avoidance of the strict application of the Bylaws relating to corner

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lots (and likely other applicable Bylaws), rather than requiring compliance with the clear intent of the Bylaws, would be looked upon favorably by the Board. Such action would also create a clear path for future applicants to look for other ways to seek to avoid application of other provisions of the Bylaws by citing 390 Grove Street as precedent.

Consider further the absurd results that could arise if the next plan had a one (1) foot parcel along a street or a six (6) inch parcel to evade the Bylaws' lot width requirements. We suggest that the depth of a parcel creates a distinction without a difference. It is the purpose of the Bylaws and the result of avoidance that matters here. In the case of 390 Grove Street, Applicant's attorney acknowledged that the purpose is to avoid dimensional compliance requirements. The Board should not endorse any scheme that is designed to circumvent the Bylaws in such a brazen manner.

Parcel B is a 8,618 sq. ft. non-buildable lot which serves no purpose other than to evade the Bylaws. *See Cricones v. Planning Bd. of Dracut*, 39 Mass. App. Ct. 264, 266 (1995) (rejecting use of non-buildable parcels for purposes of evading subdivision control law). Again, Applicant admitted this fact to the Board, but reasoned that this deliberate evasion was acceptable because it was not expressly prohibited by the Bylaws. Putting aside that it is, for the reasons explained above, expressly prohibited by the Bylaws, the intentional avoidance of a Bylaws' intent is also prohibited by law for public policy reasons. *See Gifford v. Planning Bd. of Nantucket*, 376 Mass. 801, 808 (1978) (rejecting ANR plan due to illusory frontage on applicable lots). As Massachusetts native Justice Oliver Wendell Holmes stated on behalf of the United States Supreme Court more than 100 years ago: "When an act is condemned as an evasion, what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law." *Bullen v. Wisconsin*, 240 U.S. 625, 630-631 (1916) (Holmes, J.). That is precisely the case here, and it should not be countenanced by the Planning Board.

What makes Applicant's misuse of Parcel B even more egregious is the fact that the Bylaws already specifically provide a clear and readily available method for dealing with the issue of insufficient width of Lot 1. Under the current circumstances, rather than create a fictitious parcel B to avoid corner lot status, the Applicant could and should apply to the Zoning Board of Appeals ("BOA") for a corner lot width variance for Lot 1. Should the Applicant be able to demonstrate to the BOA, within applicable legal and statutory requirements, that a variance should be granted, then the Applicant could avoid the subterfuge of parcel B and come to the Board with a straightforward and Bylaws' compliant plan. Of course, the Applicant would have to prove, as it should have to do, that she meets the standards for obtaining a variance. Instead,

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the Applicant is seeking to have the Board determine what the BOA should be reviewing and determining.

It should also be noted that disapproval of the Application would not render Property valueless, the Property would remain a single-family lot compatible with the well-established and desirable surrounding neighborhood.

For the foregoing reasons, Lot 1 is, from a textual as well as a public policy perspective, a “corner lot” for purposes of the Bylaws. Therefore, Applicant cannot supply a “by right” plan which, by Applicant’s own admission, is necessary for the Board to even entertain a Proposed Subdivision, and the Proposed Subdivision must be rejected.

Bernkopf Goodman LLP:

Gary P. Lilienthal

By: Gary P. Lilienthal



Robert W. Stetson

GPL/rws

cc: James Curley, Esquire
Domenic Colasacco
Robert Badavas
Peter B. McGlynn, Esquire
Karl P. Skulte, P.E.
George Giunta, Jr., Esquire

January 28, 2021

Email (aclee@needhamma.gov)

GARY P. LILIENTHAL

DIRECT DIAL: (617) 790-3360

E-MAIL: GLILIENTHAL@BG-LLP.COM

Needham Planning Board
Ms. Alexandra Clee, Assistant Town Planner
Ms. Lee Newman, Director of Planning and Community Development
Town of Needham
Planning and Community Development Department
500 Dedham Avenue
Public Services Administration Building, Suite 118
Needham, MA 02492

Re: Application (the “Application”) to the Needham Planning Board (the “Board”) by Elisabeth Schmidt-Scheuber (the “Applicant”) to subdivide land into a two lot subdivision at 390 Grove Street, Needham, Massachusetts (the “Property”)

Ladies and Gentlemen:

Thank you for forwarding to us the materials submitted by Applicant on January 15, 2021.

While we believe that our clients’ James Curley, Domenic Colasacco and Robert Badavas (the “Abutters”) position was outlined clearly in our previous letters to you, especially in our letter of November 23, 2020, Mr. Giunta’s letter to the Planning Board of January 14, 2021 requires a brief response.

Applicant reserves the right to comment on waivers and engineering matters at the Planning Board hearing on February 2, 2021.

The primary legal question in this Application continues to be whether Lot 1 is a Corner Lot under the Needham By-Laws. That question is to be answered by the Planning Board.

There are certain facts which are not in dispute.

- The width of Lot 1 at the appropriate measuring point is less than 120 feet.

- If, notwithstanding the creation of Parcel B, Lot 1 is deemed a Corner Lot, then it is of insufficient width at the appropriate measuring point under the Needham By-Laws.
- Parcel B is to be beneficially owned, 50% by the owner of Lot 1.
- Lot 1 and Parcel B are fully contiguous along their common boundary and no other lot in the requested subdivision abuts Parcel B.
- Parcel B along its entire frontage directly abuts Grove Street.
- The Applicant's purported purpose for creating Parcel A for drainage can be accomplished by a simple agreement or easement.

The case law provided by the Abutters in our letter to the Board of November 23, 2020 clearly shows that the Planning Board has the right, and Abutters believe the obligation, to determine whether, notwithstanding the creation and existence of Parcel B between Grove Street and Lot 1, that Lot 1 is a Corner Lot. This is not a question, as Mr. Giunta would have it in his paragraph labeled "First", of whether Applicant can create Parcel B. It can. It is a question of whether under the spirit and intent of the applicable Needham By-Laws, the creation of Parcel B legally keeps Lot 1 from being a Corner Lot. The Abutters submit that the Planning Board can and should find that Lot 1 is to be treated as a Corner Lot.

The Bylaws define a "corner lot" as a "lot at the point of intersection of, and abutting on, two or more intersecting streets..." A lot "abuts on" a street when it appears to have a seamless connection to it. Applicant has failed to present any legal or factual basis for contending that Parcel B somehow changes the character of Lot 1 in this regard. Therefore, and for the reasons stated in our November 23, 2020 letter (attached hereto), Lot 1 remains a "corner lot" from a textual and public policy perspective notwithstanding the legal fiction of Parcel B."

In his paragraph labeled "Second", Mr. Giunta attempts to convince the Board that the approved Hunter Lane subdivision created a precedent for the concept that creation of a "parcel" between a corner street and an approved subdivision building lot avoided the building lot being treated as a Corner Lot. Mr. Giunta is just wrong in citing Hunter Lane as precedent in the current application. It is our understanding that the issue of the use of a "parcel" to prevent a subdivision lot from becoming a Corner Lot was neither raised, discussed nor determined in the Hunter Lane Application. Therefore, it cannot become precedent.

Moreover, the Abutters' are concerned that in trying to use Hunter Lane as precedent in this application, the Applicant has demonstrated the danger of the Board allowing the creation of fictitious parcels, or similar subterfuges as precedent for the avoidance of important provisions of By-Laws in the future. By approving this subdivision based upon the creation of a parcel to keep a lot from being a Corner Lot, which the Mr. Giunta readily admitted in a previous hearing, the

Board would be sending a message to future developers and applicants that avoidance of the strict application of the By-Law relating to corner lots (and likely other applicable By-Laws), rather than requiring compliance with the clear intent of the By-Law, would be looked upon favorably by the Board. Such action would also create a clear path for future applicants to look for other ways to seek to avoid application of other provisions of the By-Law by citing 390 Grove Street as precedent.

Applicant is also asking the Board to believe that if the Board finds that despite the creation of Parcel B, Lot 1 is a Corner Lot that the Board would be forcing the Applicant to have frontage on Grove Street. That suggestion is a distraction. The Board is within its authority to determine, based on case law and the spirit and intent of the local By-Laws, whether Lot 1 is deemed to have frontage on Grove Street.

In Mr. Giunta's paragraph labeled "Fourth" he cites that inconsistencies must be construed reasonably. That is exactly what we are asking the Board to do. The use of the concept of creating a "parcel" to keep a lot from having frontage on a street is inconsistent with reasonable interpretation of the By-Laws.

In the ensuing paragraphs, without citing one new case, Mr. Giunta attempts to refute the cases cited by the Applicants by merely reinterpreting or disagreeing with what the cases say. Mr. Giunta attempts to diminish the applicability of all but one of these cases by noting that they were from jurisdictions outside of Massachusetts. The practice of citing cases outside of the applicable jurisdiction is not only commonplace, but required where cases within the applicable jurisdiction may not be on point or suggestive of a conclusion. We are sure that if Mr. Giunta had a case or cases on point, in Massachusetts that he would have cited the same. In the one Massachusetts case which he acknowledges that the decision is consistent with the Abutters' arguments.

The Abutters wish to thank the Needham Planning Board, Engineering and Planning Department for the serious interest which they have taken in this case in reviewing and being considerate of the issues raised. As the Abutters said in the opening of this letter, the facts of this case are relatively clear. The issue to be determined is whether Lot 1, notwithstanding the creation of Parcel B, is, under the intent and spirit of the local By-Laws, a Corner Lot.

Town of Needham
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January 28, 2021
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We would request that a Decision be made, and that the Application for approval be rejected.

Sincerely,

Bernkopf Goodman LLP

Gary P. Lilienthal

By: Gary P. Lilienthal, Of Counsel

GPL/ljg

cc: James Curley, Esquire
Domenic Colasacco
Robert Badavas
Peter B. McGlynn, Esquire
Robert Stetson, Esquire
Karl P. Skulte, P.E.
George Giunta, Jr., Esquire

George Giunta, Jr.
ATTORNEY AT LAW*
281 Chestnut Street
Needham, MASSACHUSETTS 02492
*Also admitted in Maryland

TELEPHONE (781) 449-4520

FAX (781) 449-8475

January 14, 2021

Lee Newman
Planning Director
Town of Needham
1471 Highland Avenue
Needham, MA 02492

VIA EMAIL: LNewman@needhamma.gov

Re: Definitive Subdivision Application
Elisabeth Schmidt-Scheuber
390 Grove Street

Dear Lee,

Submitted herewith in connection with the above referenced, pending application for definitive subdivision of the property known and numbered 390 Grove Street, please find electronic copies of the following:

1. Revised Plan Set entitled "390 Grove Street (Assessor's Map 221 – Lot 9, Definitive Subdivision Plan", consisting of ten sheets as follows:

(1) Cover Sheet and Context Map, dated July 20, 2019, revised November 2, 2018, March 29, 2019, July 12, 2019, August 22, 2019, October 4, 2019, February 7, 2020, March 2, 2020, November 24, 2020 and January 11, 2021;

(2) Record Conditions Plan, dated July 20, 2019, revised November 2, 2018, July 12, 2019, August 22, 2019, September 4, 2019, October 21, 2019, February 7, 2020, March 2, 2020, November 24, 2020 and January 14, 2021;

(3) (By Right) Subdivision Plan, dated July 20, 2019, revised November 2, 2018, July 12, 2019, August 22, 2019, September 4, 2019, October 21, 2019, February 7, 2020, March 2, 2020, November 24, 2020 and January 11, 2021;

(4) Proposed Lotting Plan, dated July 20, 2019, revised November 2, 2018, July 12, 2019, August 22, 2019, September 4, 2019, October 21, 2019, February 7, 2020, March 2, 2020, November 24, 2020 and January 11, 2021;

(5) Proposed Site & Grading Plan, dated July 20, 2019, revised November 2, 2018, July 12, 2019, August 22, 2019, September 4, 2019, October 19, 2019, February 7, 2020, March 2, 2020, November 24, 2020 and January 11, 2021;

(6) Proposed Utilities & Profile, dated July 20, 2019, revised November 2, 2018, July 12, 2019, August 22, 2019, September 4, 2019, October 19, 2019, February 7, 2020, March 2, 2020, November 24, 2020 and January 11, 2021;

(7) Proposed Landscape Plan, dated July 20, 2019, revised November 2, 2018, July 12, 2019, August 22, 2019, September 4, 2019, October 19, 2019, February 7, 2020, March 2, 2020, November 24, 2020 and January 11, 2021;

(8) Proposed Landscape Details, dated July 20, 2019, revised November 2, 2018, July 12, 2019, August 22, 2019, September 4, 2019, October 19, 2019, February 7, 2020, March 2, 2020, November 24, 2020 and January 11, 2021;

(9) Site Details 1, dated July 20, 2019, revised November 2, 2018, July 12, 2019, August 22, 2019, September 4, 2019, October 19, 2019, February 7, 2020, March 2, 2020, November 24, 2020 and January 11, 2021; and

(10) Site Details 2, dated July 20, 2019, revised November 2, 2018, July 12, 2019, August 22, 2019, September 4, 2019, October 19, 2019, February 7, 2020, March 2, 2020, November 24, 2020 and January 11, 2021;

2. Stormwater Analysis and Calculations Report for 390 Grove Street, Needham, Massachusetts”, dated October 4, 2019, revised November 24, 2020 and January 8, 2021;

3. First Amended List of Waiver, dated January 14, 2021; and

4. Letter from Meridian Associates, dated January 14, 2021.

As shown on the (By Right) Subdivision Plan, the Premises may be divided into two lots without the need for any dimensional or design waivers. However, the Applicant remains of the opinion that a full width layout and full construction roadway and circle are not warranted, given the number and location of the houses proposed. Therefore, the Applicant is instead proposing a reduced width layout, reduced radius circle and reduced width roadway, without any sidewalks. The goal is to approximate a driveway as much as possible, as the majority of the way will serve only the house to the rear. This approach will also reduce the amount of impermeable surface. In addition, the Applicant is also proposing to utilize permeable pavers in the vicinity of the circle, to further reduce impermeable surface and come as close as possible to a single-family driveway aesthetic.

As a part of the revised subdivision design, the Applicant is proposing to create three non-buildable parcels: two in the front, identified on the plan as A and B, and one in the back, identified as C. Parcels A and B are intended to be owned by a Trust, the beneficiaries of which will be the owners of the two house lots, and C is to be conveyed to the Town, to be added to

adjacent open space. Certain neighbors, represented by Gary P. Lilienthal (hereinafter, collectively, the “Opponents”), have objected to Parcel B as being an impermissible attempt to circumvent the minimum required lot width requirement of Section 4.1.5 of the Zoning By-Law. In particular, they argue that Parcel B must be combined with adjacent Lot 1, resulting in a lot with frontage on Grove Street with less than the required lot width. They advance this position as a reason to deny the subdivision application. However, for the following reasons, they are incorrect in their position.

First and foremost, there is nothing whatsoever in the Subdivision Control Law, the Zoning Enabling Act, the Needham Zoning By-law or the Needham Subdivision Rules and Regulations that prohibits or otherwise limits the creation of non-buildable parcels in connection with a subdivision. It is well settled that non-buildable parcels may be included in both ANR plans and subdivision plans (See *Bloom v. Planning Board of Brookline*, 346 Mass. 278 (1963); *Smalley v. Planning Board of Harwich*, 10 Mass. App. Ct. 599, 604 (1980); *Arrigo v. Planning Board of Franklin*, 12 Mass. App. Ct. 802, 807-808 (1981) *Cricones v. Planning Bd. of Dracut*, 39 Mass. App. Ct. 264 (1995)).

Second, the Board has previously permitted the creation of non-buildable parcels to avoid the application of aspects of the Zoning By-Law. Two examples of this are the recent Heather Lane Subdivision and the Woodworth Road subdivision. In the Heather Lane subdivision, the Board approved a subdivision plan that included a 10’ wide by approximately 100’ long strip of land between Lot 1 and Chestnut Street. Absent the creation of this strip, Lot 1 would not comply with the provisions of Section 4.1.5, as it would have less than the required 150’ minimum required lot width along Chestnut Street. In the Woodworth Road subdivision, the Board approved a plan that included a 10’ wide by approximately 247’ long strip of land between the road and an adjacent property that had frontage on South Street. Absent creation of the strip, the adjacent property would have gained frontage on the new road and the existing house located thereon would have been in violation of the required front yard setback.

Third, the essence of the Opponents’ argument is that Lot 1 should be required to have frontage on both Grove Street *and* the new subdivision roadway. However, this would be at odds with the definition of frontage set forth at Section 1.3 of the By-law, which reads:

a continuous portion of a sideline of a way, public or private, between the sidelines of a lot in common ownership and in the case of a corner lot, between a sideline of such lot and the intersection of sidelines of ways or the midpoint of the curve connecting such sidelines. *No lot shall be required to have frontage on more than one way.* No lot shall be deemed to have frontage unless there exists safe and convenient vehicular access from said lot to a street or way. (emphasis added)

Requiring Lot 1 to have frontage on both Grove Street and the subdivision way, would therefore be requiring it to have frontage on more than one way, contrary to the By-law.

Fourth, Section 4.1.3 imposes a minimum lot width requirement in all districts equal to the minimum required frontage, except in the SRA District where the width is reduced by 30’. Moreover, pursuant to the last sentence of Section 4.1.3, “for corner lots, the measurement shall be taken from front corners along both frontage lines”. As a result, on its face, Section 4.1.3 is in conflict with the definition of Frontage at Section 1.3. Faced with such inconsistency, the By-law

must be construed reasonably in a manner that gives each portion meaning (See *Haynes v. Grasso*, 353 Mass. 731, 734 (1968) (quoting *Bell v. Treasurer of Cambridge*, 310 Mass. 484, 489 (1941), *Framingham Clinic, Inc. v. Zoning Bd. of Appeals of Framingham*, 382 Mass. 283, 290 (1981), *Adamowicz v. Town of Ipswich*, 395 Mass. 757 (1985), and *Hall v. Zoning Board of Appeals of Edgartown*, 28 Mass. App. Ct. 249, 254 (1990)).

Fifth, the Opponents seem to assert that, because the owner of Lot 1 will have partial ownership in Parcel B, and because Parcel B is intended to house a drainage infiltration system, which benefits Lot 1 in part, then, as a matter of law, Parcel B must merge with Lot 1 such that Lot 1 abuts Grove Street. To support their position, the Opponents reference several court decisions from other jurisdictions addressing what it means for land to “abut”. Setting aside the question of whether decisions from other jurisdictions, based on different legal systems and involving entirely different statutory regimes are relevant, on their facts alone, the cases are all inapposite. And, the sole Massachusetts decision the Opponents cite, from the Superior Court, is irrelevant.

In particular, the first case cited, *City of Shreveport v. Selber*, 21 So. 2nd 738 (La. Ct. App. 1945), dealt with an attempt by the City of Shreveport to collect a lien for street paving. As is so often the case, the pavement did not run the full width of the street layout, but rather, left gaps on either side. As a result, the defendant claimed the improvements did not abut the lots in question and sought to avoid payment. After a lengthy discussion of what constitutes a street, it was in this context that the Court stated: “In cases of this character to abut means that here intervenes no other land that may be put to private use”. This is a fundamentally different issue than presented here. Moreover, to the extent this case is applicable, it supports the Applicant’s position in that Parcel B is land that may be put to private use, in as much as it will be owned, not just by Lot 1, but also by Lot 2, for the private purpose of stormwater infiltration for both lots and the roadway providing access thereto.

Similarly, the second case cited, *People ex. Re. Whittock c. Willison*, 237 Ill. 584 (1908), dealt with an attempt by the county collector to levy on sidewalk improvement assessments for lots surrounding a public square with streets on all four sides. The ordinance in question provided for sidewalks “in front of the lots, tracts and parcels of land abutting” on the public square, with the cost to be paid by the “lots, blocks and parcels of land abutting on said street along the line of said improvement”. The defendants objected, claiming that the ordinance and related plan were not sufficiently clear as to the location of the sidewalks, and were therefore illegal. The court interpreted the term “abutting” in the context of the ordinance to mean the lots abutting the public square, without regard for the fact that they were separated from the square itself by streets. As such, the court found that the location of the sidewalk was not uncertain and that the ordinance was valid. The entire case dealt with statutory construction in the context of a municipal betterment ordinance; a circumstance wholly unrelated to the situation before the Board.

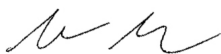
The third case cited by the Opponents, *Homac Corp. v. Sun Oil Co.*, 137 Misc. 551, 244 N.Y.S. 51 (N.Y. Sup. Ct. 1930), dealt with a fire at a gasoline distribution facility owned by the defendant, which spread to buildings on the opposite side of the street, owned by plaintiff. The defendant rejected liability because the two properties did not abut and because the damage to some of the structures on the plaintiff’s property was caused by sparks and embers from a warehouse on the very same property. In addressing the issue of whether the properties were

abutting, the court noted that “the words “abutting”, “adjoining”, “contiguous”, *in tort cases* are not intended to be used in their ordinary sense, namely, that the properties must actually touch each other. I think that these words should be construed, under facts like those in this case, to mean that properties abut and adjoin, or are continuous to each other, when they are quite near to each other and are separated by no other property which can be put to a private use, like a public street or public alley.” (emphasis added). In other words, the concept of abutting property in tort cases in New York was to be considered differently from other cases.

Finally, as indicated above, the only Massachusetts case cited by the Opponents was a Superior Court decision, *Orcutt v. Bd. Of Health for Town of Webster*, 2007 WL 756595 (Mass. Super. 2007). That case dealt with whether or not the Orcutts, owners of a single family house, could be required to connect to sanitary sewer in the street, or whether they could remain connected to an on-site septic system. The Orcutts argued that, because their property did not directly abut or have any frontage on the street, they could not be made to connect. However, access to their property was afforded over a private right of way easement running from the street to their property. Based on this easement, the Town argued that the Orcutts’ property abutted a street with a common sewer pursuant to M.G.L. c.83 §11. And because the driveway rights afforded to the Orcutts included utility rights, the court found that their property had sufficient access sufficient to qualify as abutting within the context of the statute. Thus, the analysis and holding was limited to the context of the statute and is not relevant to the case before the Board. Moreover, there is a significant and material difference between a lot connected to a street through an access easement and one without any such connection at all.

Moving beyond the Opponents’ objections to Parcel B, they previously raised a number of other objections and concerns. These have all been addressed by the revisions to the plans and by the letter of Meridian Associates, referenced above. It is therefore the Applicant’s position that approval of the revised plan is proper and appropriate and is respectfully requested.

Sincerely,

A handwritten signature in dark ink, appearing to read "George Giunta, Jr.", with a stylized, cursive script.

George Giunta, Jr.

January 12, 2021

Email (aclee@needhamma.gov)

GARY P. LILIENTHAL

DIRECT DIAL: (617) 790-3360

E-MAIL: GLILIENTHAL@BG-LLP.COM

Needham Planning Board
Ms. Alexandra Clee, Assistant Town Planner
Ms. Lee Newman, Director of Planning and Community Development
Town of Needham
Planning and Community Development Department
500 Dedham Avenue
Public Services Administration Building, Suite 118
Needham, MA 02492

Re: Application (the “Application”) to the Needham Planning Board (the “Board”) by Elisabeth Schmidt-Scheuber (the “Applicant”) to subdivide land into a two lot subdivision at 390 Grove Street, Needham, Massachusetts (the “Property”)

Ladies and Gentlemen:

In advance of the upcoming continued hearing on January 19, 2021, James Curley, Domenic Colasacco and Robert Badavas (the “Abutters”), all of Grove Street, Needham, wish to express their concern, relative to their disappointment with and perceived unfairness of the last hearing on December 15, 2020.

1. The Application was scheduled to be heard at 7:40 p.m. on December 15th. A first hearing on a different location, but for which the Applicant’s attorney was the same attorney as for the Application, George Giunta, Esquire, was opened just prior to the hearing on the Application and was concluded at approximately 9:30 p.m. The Abutters’ attorneys, engineers and interested parties on the Grove Street Application waited for approximately 2 hours to be heard.
2. While we all understand that hearings often go on longer than expected, after 2 hours of having attorneys, consultants and others waiting for the hearing on the Application, the Abutters were informed, for the first time, that the Town Engineer had not yet reviewed the Applicant’s revised plans, submitted on November 25, 2020, and that the hearing would have to be postponed. This could have and should have been disclosed at the beginning of the evening.

3. Attorney Giunta was then afforded time to make arguments against the Abutters' well-supported contention that the Applicant had failed to submit a completed by-right plan and, therefore, the Application legally failed to comply with the Bylaws and Rules and Regulations. These arguments consisted of legally irrelevant attacks against Applicant's reliance (in part) on reasoning from courts in other states, which is a well-accepted method of analysis and interpretation, and a reference to another subdivision on Hunter Lane where the Board approved a similar situation but for which there was no discussion or recognition of the insufficient corner lot width issue which the Abutters have raised. To date, Applicant has utterly failed to submit any documented legal rebuttal to support their admitted subversion of the Bylaws and Rules and Regulations. We believe that any court reviewing this issue will agree that the plain language, intent of the Bylaws and Rules and Regulations, and caselaw supports the Abutters' interpretation, and that the Board is, therefore, legally obligated to reject the Application.
4. At the December 15th virtual meeting, Attorney Giunta and his consultants were visible, but none of the Abutters' professional team were visible. All parties should have equal access and visibility for their presentations.
5. Just before allowing Applicant to speak, one of the Board members, Ted Owens, appeared to have exited the hearing, and, although we believe that member was sitting on this case, no discussion of the effect of such member's sudden departure was discussed or the reason for their absence explained.

The Abutters, all Needham residents, believe that they have been treated unfairly and that their objections have not been duly considered to this point.

Therefore, with all due respect to the Board and the Planning Department, the Abutters request the following:

- A. that all participants be visible at the January 19th virtual hearing;
- B. that the Abutters be provided, in advance, with the Town Engineer's report on Applicant's revised plans; that Abutters' engineer be permitted to discuss such report with the Town Engineer; and that the Town Engineer be authorized to have such a discussion;

Town of Needham
Planning Board
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January 12, 2021
Page 3

- C. that the Abutters' engineer's peer review report dated December 8, 2020 be forwarded to the Town Engineer;
- D. that of the Abutters' legal objection dated November 23, 2020 be forwarded to Town Counsel for review and that Town Counsel be present for the next hearing;
- E. that if any administrative delays are anticipated, the Abutters be advised in advance so that resources can be properly deployed and that if any additional continuances are needed, they should be anticipated, and postponements including the date for the Board's decision be requested and received accordingly; and
- F. that the Abutters be advised which Board Members will be making the decision on the Application.

While the Abutters understand that the current health crisis taxes all of our resources, they believe that this Application has been treated with too great of deference, especially considering the repeated failure of the Application to comport with the Bylaws and Rules and Regulations, and we would ask that the matter be expeditiously concluded for all parties.

Sincerely,

Bernkopf Goodman LLP

Gary P. Lilienthal

By: Gary P. Lilienthal, Of Counsel

GPL/ljg

cc: James Curley, Esquire
Domenic Colasacco
Robert Badavas
Peter B. McGlynn, Esquire
Robert Stetson, Esquire
Karlís P. Skulte, P.E.
George Giunta, Jr., Esquire

November 23, 2020

GARY P. LILIENTHAL

DIRECT DIAL: (617) 790-3360

E-MAIL: GLILIENTHAL@BG-LLP.COM

*Via First Class Mail;
Email (aclee@needhamma.gov) and Hand Delivery*

Needham Planning Board
Ms. Alexandra Clee, Assistant Town Planner
Ms. Lee Newman, Director of Planning and Community Development
Town of Needham
Planning and Community Development Department
500 Dedham Avenue
Public Services Administration Building, Suite 118
Needham, MA 02492

Re: Application (the “Application”) to the Needham Planning Board (the “Board”) by Elisabeth Schmidt-Scheuber (the “Applicant”) to subdivide land into a two lot subdivision at 390 Grove Street, Needham, Massachusetts (the “Property”)

Ladies and Gentlemen:

The abutters to the Property, James Curley, Domenic Colosacco and Robert Badavas (collectively, the “Neighbors”) of Grove Street, Needham hereby submit this follow up letter to the Board in opposition to the Application.

As an initial matter, the Neighbors still have not received revised plans addressing the Application’s deficiencies identified at the last hearing. Therefore, the Application remains incomplete and deficient in several ways under both the Town’s Zoning Bylaws and the Subdivision Rules and Regulations. For example, the Application is missing: a) an “as of right” approvable plan; b) adequate acreage as to Lot 1; c) complete and accurate drainage calculations; d) a fully dimensioned plan; e) adequate road entry radius; and (f) width of Lot 1 that is compliant as a “corner lot” at the setback line.

Moreover, the Applicant cannot create an “as of right” plan because Lot 1 contains inadequate width to comply with Needham Zoning By-Law (the “Bylaws”) Section 4.1.5 requiring 120 foot width for a “corner lot” at the setback line.

At the last hearing, Applicant’s attorney admitted that Parcel A is being created for the purpose of avoidance of the Subdivision Regulations and Zoning Bylaws applicable to Lot 1 being a

“corner lot.” While Applicant’s attorney offered the Board other reasons to justify Parcel A such as allowing for a Home Owners Association (“HOA”) to manage the drainage area and to provide an area for drainage, these justifications miss the mark entirely. The appropriate and commonly used method for dealing with such a drainage issue is to create a simple easement agreement which would provide for drainage, maintenance, and cost sharing. In fact, creating a HOA will still require the granting of an easement for the benefit of Lots 1 and 2. The sole reason for Parcel A and the HOA is to avoid the Bylaws’ lot width requirements.

Parcel A will be in all material respects part of Lot 1 including partial ownership by Lot 1. If the Board approves this deception, the Applicant will be allowed to evade the By-Law requirement that a lot on a corner must have 120 feet of width at the appropriate measuring point, when Lot 1 has only 107 feet.

It has been brought to our attention that the Planning Board or Planning Department consulted with the Building Commissioner regarding his position on the concept of a “Parcel” being placed between Lot 1 and Grove Street. I personally reached out to Commissioner Roche and had a cordial telephone conversation with him. My understanding of Commissioner Roche’s view of the creation of a parcel and resulting non-corner lot status position was that this action might be a “loophole” in the Zoning By-Law. He asked me why I thought this was inappropriate. I replied that Parcel A was designed to avoid the width requirement for Lot 1, and that no matter what it was labeled it was effectively a part of Lot 1 and calling it a parcel did not change that. When I asked the Commissioner if his feelings might change if the parcel was 18” wide along the entire frontage of Grove Street the conversation turned to it ultimately being in the province of the Planning Board to deal with the issue. We agree with the Building Commissioner that this is a determination to be made by the Planning Board. While it did not come up in the conversation, what is clear is that the Building Commissioner would NOT issue a Building Permit for Parcel A.

Just as the Planning Board would not be responsible for determining whether a building permit was appropriate, the Building Commissioner should not be the party determining compliance of a definitive subdivision for which approval is requested by the Planning Board. It is also worth reiterating that the subdivision control law (M.G.L. c. 41 §81M et. seq.) provides for the division of land into “Lots” not lots and parcels.

The Bylaws define a “corner lot” as a “lot at the point of intersection of, and abutting on, two or more intersecting streets...” The critical question is what constitutes a lot “abutting on” two or more intersecting streets?

“Abutting on” is not defined in the Bylaws. In the absence of an express statutory definition, the meaning of the word becomes a question of law, and ordinary rules of statutory construction are to be applied. *Framingham Clinic, Inc. v. Zoning Board of Appeals of Framingham*, 382 Mass. 283, 290 (1981). The term must be read in the context of the Bylaws as a whole, giving it its “common” “approved” and “usual” meanings “from sources presumably known to the [bylaw’s] enactors, such as [its] ... use in other legal contexts and dictionary definitions”. *Id.*

The term “abut” in this context means that there is no intervening land which may be put to private use. See *City of Shreveport v. Selber*, 21 So. 2d 738, 742 (La. Ct. App. 1945) (“In cases of this character to abut means that there intervenes no other land that may be put to private use”). To qualify as an abutter, the land in question does not need to touch upon or directly contact each other. *People ex rel. Whittock v. Willison*, 237 Ill. 584, 591 (1908), quoting *Richards v. City of Cincinnati*, 31 Ohio St. 506 (“[t]he word ‘abutting’ means joined to or adjoining, but does not necessarily imply that the things spoken of are in contact”). The critical question is whether the properties are separated by other property which could be put to a private use, such as a public street or public alley. *Homac Corp. v. Sun Oil Co.*, 137 Misc. 551, 553, 244 N.Y.S. 51 (N.Y. Sup. Ct. 1930).

Under the Application the only use of Parcel A is for a drainage easement associated with Lot 1 and the Subdivision. Even then, the drainage system is only partially on Parcel A and depends on Lot 1 for drainage management as well. There is no distinct use for Parcel A. The created easement makes Parcel A subservient to Lot 1 and, therefore, part of Lot 1. Parcel A can never be sold to a third party or built upon or developed in any significant fashion. Under the well-established meaning of “abutting on,” Parcel A does not create a true barrier and Lot 1, therefore, “abuts on” Grove Street.

At least one Massachusetts case addresses this issue and concluded that “abutting on” does not require that the subject properties touch. In *Orcutt v. Bd. of Health for Town of Webster*, 2007 WL 756595, *2 (Mass. Super. 2007), the court held that a property “abutted” a public way for purposes of requiring sewer connections because, even though the subject property did not technically adjoin the public way, the property benefitted from an easement which connected the two and, therefore, in substance, if not form, “abutted” the public way. The analogy to the Application is clear. Parcel A serves no independent purpose and, to the contrary, contains an irrigation system that will serve Lot 1. Again, Lot 1 will possess a beneficial ownership interest in Parcel A, thereby further diminishing the legal artifice designed by Applicant. Lot 1 “abuts” Grove Street even if it does not technically adjoin it.

Determining that Lot 1 is a “corner lot” is consistent with the intent of the Bylaws. See *Duracraft Corp. v. Holmes Products Corp.*, 427 Mass. 156, 163 n. 11 (1998) (statutes should be interpreted “not alone according to their simple, literal or strict verbal meaning, but in accord with the spirit and intent of the legislation”). The purpose of the Bylaws’ lot width requirements is to ensure to the greatest extent possible uniformity in lot size and shape on corner lots. Parcel A provides no barrier between Lot 1 and Grove Street and to all passersby the residence constructed on Lot 1 will appear to adjoin and will for all purposes adjoin Grove Street – just on a too-narrow parcel. See *Aquino v. United Prop. & Cas. Co.*, 483 Mass. 820, 840 (2020) (holding, in the insurance context, that a structure abutted another where it “appears to have a seamless connection” thereto). This Application undermines the purpose, spirit and intent of the Bylaws’ corner lot width requirements.

Interpreting Lot 1 as a “corner lot” would also avoid absurd results in this case and in the future. See *Green v. Bd. of Appeal of Norwood*, 358 Mass. 253, 258 (1970) (by-laws should not be so interpreted as to cause absurd or unreasonable results when the language is susceptible of a sensible meaning). If Applicant can avoid designation as a “corner lot” so easily, any property owner would be free to evade the “corner lot” designation, and the Bylaws’ dimensional requirements, by adding a fictional sliver parcel as a buffer. This would defeat the entire purpose of the “corner lot” requirements and render the Bylaws’ requirements in that regard entirely meaningless and ineffective. As a matter of statutory interpretation, such a result is legally impermissible. See *Adamowicz v. Town of Ipswich*, 395 Mass. 757, 760 (1985) (Nor do we interpret a statute to render it or any portion of it meaningless).

Additionally, Parcel A is a 2,500 sq. ft. non-buildable lot which serves no real purpose other than to evade the Bylaws. Again, Applicant admitted this fact at the July 21st hearing, but reasoned that this deliberate evasion was acceptable because it was not expressly prohibited by the Bylaws. Putting aside that it is, for the reasons explained above, expressly prohibited by the Bylaws, the intentional avoidance of a Bylaws’ intent is also prohibited by law for public policy reasons. See *Gifford v. Planning Bd. of Nantucket*, 376 Mass. 801, 808 (1978) (rejecting ANR plan due to illusory frontage on applicable lots).

As Massachusetts native Justice Oliver Wendell Holmes stated on behalf of the United States Supreme Court more than 100 years ago: “When an act is condemned as an evasion, what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law.” *Bullen v. Wisconsin*, 240 U.S. 625, 630-631 (1916) (Holmes, J.). That is precisely the case here, and it should not be countenanced by the Planning Board.

For the foregoing reasons, Lot 1 is, from a textual as well as a public policy perspective, a “corner lot” for purposes of the Bylaws. Therefore, Applicant cannot supply a “by right” plan which, by Applicant’s own admission, is necessary for the Board to even entertain a Proposed Subdivision, and the Proposed Subdivision must be rejected.

What makes this even more egregious is the fact that the Bylaws already specifically provide a clear and readily available method for dealing with the issue of insufficient width of Lot 1. Under the current circumstances, rather than create a fictitious Parcel A to avoid corner lot status, the Applicant could and should apply to the Zoning Board of Appeals (“BOA”) for a corner lot width variance for Lot 1. Should the Applicant be able to demonstrate to the BOA that a variance should be granted, then the Applicant could avoid the subterfuge of Parcel A and come to the Board with a straightforward and Bylaws’ compliant plan. Of course, the Applicant would have to prove, as it should have to do, that she meets the standards for obtaining a variance. Instead, the Applicant is seeking to have the Board determine what the BOA should be reviewing and determining.

In addition to the foregoing, and as mentioned above in the Massachusetts case law analysis regarding precedent, the Board is strongly urged to consider the precedent which it will be setting in allowing the evasion by the Applicant of the Bylaws in the creation of Parcel A to avoid “corner lot” status. Approval of such a scheme would send a message to future applicants that creating false parcels, moving lot lines and other “creative” acts solely designed to avoid the spirit and letter of the Bylaws and the Subdivision Laws would be considered and likely approved and not held up for what it is.

We ask the Planning Board to consider what they would do if the next plan had a one (1) foot Parcel along a street which would make the proposed lot abutting the one (1) foot parcel not a corner lot? We would suggest that the depth of a parcel creates a distinction without a difference. It is the purpose of the By-Law and the result of avoidance which matter. In the case of 390 Grove Street, counsel for the Applicant acknowledged that the purpose is to avoid “Corner Lot” dimensional compliance requirements. The Planning Board should not endorse any scheme that is designed to circumvent the Zoning By-Law.

Town of Needham
Planning Board
Planning and Community Development Department
November 23, 2020
Page 6

For all the foregoing reasons the Neighbors respectfully request that the Board deny the Applicant's Application.

We look forward to being before the Board again on December 15, 2020.

Sincerely,

Bernkopf Goodman LLP

Gary P. Lilienthal

By: Gary P. Lilienthal, of counsel

GPL/ljg

cc: James Curley, Esquire
Domenic Colasacco
Robert Badavas
Peter B. McGlynn, Esquire
Robert Stetson, Esquire
Karlis P. Skulte, P.E.
George Giunta, Jr., Esquire

Definitive Subdivision Application
390 Grove Street
Needham, MA

FIRST AMENDED LIST OF WAIVERS
January 14, 2021

The Applicant hereby requests the following waivers with respect to the Town of Needham, Subdivision Regulations and Procedural Rules of the Planning Board:

1. Waiver of the requirements of Section 3.2, relative to submission of definitive plans, as follows:

- a. A waiver from the requirements of subsection (b) that plans be drawn on blue tracing cloth or mylar, and that the Title Block be located in the lower right-hand corner;
- b. A waiver from the requirements of subsection (e) that street line traverse closures be provided.

2. Waiver of the requirements of Section 3.3, relative to street and construction details, as follows:

- a. A waiver from the required width of roadway layout at Section 3.3.1 from 50 feet to 40 feet;
- b. A waiver from the required pavement width at Section 3.3.1 from twenty-four (24) to eighteen (18) feet;
- c. A waiver from the required pavement radius in the turnaround at Section 3.3.5 from sixty (60) feet to fifty-four (54) feet;
- d. A waiver from the curbing requirement in the cul-de-sac at Section 3.3.6 in the area of the permeable pavers, in favor of vertical granite curbing on only one side of the proposed street;
- e. A waiver from the requirement of sidewalks on both sides of the road layout at Section 3.3.16 to no sidewalk
- f. A general waiver of construction and such other unspecified waivers as may be necessary for the construction of the way and related improvements as shown on the revised plans submitted herewith.

3. Waiver of any and all other requirements as may be necessary and appropriate for the division / reconfiguration of the subject premises as depicted on the revised plans.

DWG. No. 6036-CVR
(IMAGE: GIS Map 200scale)

UNOFFICIAL SOILS INFORMATION

TEST PIT PERFORMED ON AUGUST 18, 2020
BY ALEXANDER F. PARKER (CERTIFIED SOIL
EVALUATOR #1848)

TEST PIT: TP-20-1
0'-36" C: SANDY LOAM
36"-41" APb: SANDY LOAM
41"-54" Bw: SANDY LOAM
54"-120" 2Cd: SANDY LOAM
E.S.H.G.W. @ 59"
NO WEEPING OBSERVED

UNOFFICIAL SOILS INFORMATION

TEST PITS WERE PERFORMED ON SEPTEMBER 11, 2017 BY
ANDREW P. RODRIGUEZ (CERTIFIED SOIL EVALUATOR #13890)

TEST PIT: TP-1
0'-10" AP: SANDY LOAM
10"-26" B: SANDY LOAM
26"-80" C: GRAVELY SANDY LOAM
E.S.H.G.W. @ 36"
NO WEEPING OBSERVED

EST PIT: TP-2
0'-7" AP: SANDY LOAM
7"-23" B: SANDY LOAM
23"-90" C: GRAVELY SANDY LOAM
E.S.H.G.W. @ 38"
NO WEEPING OBSERVED

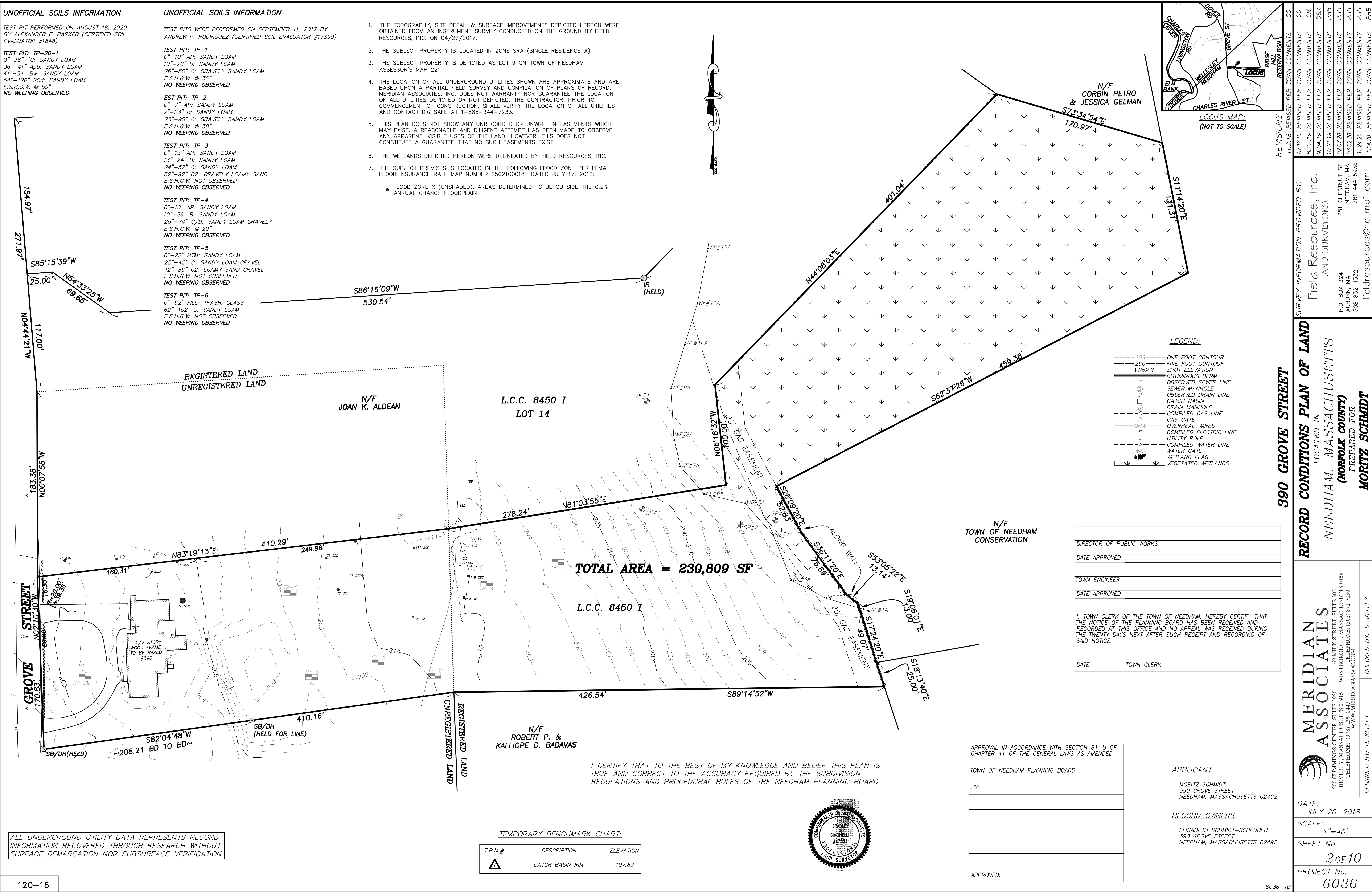
TEST PIT: TP-3
0'-13" AP: SANDY LOAM
13"-24" B: SANDY LOAM
24"-52" C: SANDY LOAM
52"-92" C2: GRAVELY LOAMY SAND
E.S.H.G.W. NOT OBSERVED
NO WEEPING OBSERVED

TEST PIT: TP-4
0'-10" AP: SANDY LOAM
10"-26" B: SANDY LOAM
26"-74" C/D: SANDY LOAM GRAVELY
E.S.H.G.W. @ 29"
NO WEEPING OBSERVED

TEST PIT: TP-5
0'-22" HTM: SANDY LOAM
22"-42" C: SANDY LOAM GRAVEL
42"-86" C2: LOAMY SAND GRAVEL
E.S.H.G.W. NOT OBSERVED
NO WEEPING OBSERVED

TEST PIT: TP-6
0'-62" FILL: TRASH, GLASS
62"-102" C: SANDY LOAM
E.S.H.G.W. NOT OBSERVED
NO WEEPING OBSERVED

- THE TOPOGRAPHY, SITE DETAIL & SURFACE IMPROVEMENTS DEPICTED HEREON WERE OBTAINED FROM AN INSTRUMENT SURVEY CONDUCTED ON THE GROUND BY FIELD RESOURCES, INC. ON 04/27/2017.
- THE SUBJECT PROPERTY IS LOCATED IN ZONE SRA (SINGLE RESIDENCE A).
- THE SUBJECT PROPERTY IS DEPICTED AS LOT 9 ON TOWN OF NEEDHAM ASSESSOR'S MAP 221.
- THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN ARE APPROXIMATE AND ARE BASED UPON A PARTIAL FIELD SURVEY AND COMPILATION OF PLANS OF RECORD. MERIDIAN ASSOCIATES, INC. DOES NOT WARRANTY NOR GUARANTEE THE LOCATION OF ALL UTILITIES DEPICTED OR NOT DEPICTED. THE CONTRACTOR, PRIOR TO COMMENCEMENT OF CONSTRUCTION, SHALL VERIFY THE LOCATION OF ALL UTILITIES AND CONTACT DIG SAFE AT 1-888-344-7233.
- THIS PLAN DOES NOT SHOW ANY UNRECORDED OR UNWRITTEN EASEMENTS WHICH MAY EXIST. A REASONABLE AND DILIGENT ATTEMPT HAS BEEN MADE TO OBSERVE ANY APPARENT, VISIBLE USES OF THE LAND; HOWEVER, THIS DOES NOT CONSTITUTE A GUARANTEE THAT NO SUCH EASEMENTS EXIST.
- THE WETLANDS DEPICTED HEREON WERE DELINEATED BY FIELD RESOURCES, INC.
- THE SUBJECT PREMISES IS LOCATED IN THE FOLLOWING FLOOD ZONE PER FEMA FLOOD INSURANCE RATE MAP NUMBER 25021C0018E DATED JULY 17, 2012:
 - FLOOD ZONE X (UNSHADED), AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN



LEGEND:

- 259 ONE FOOT CONTOUR
- 260 FIVE FOOT CONTOUR
- +259.6 SPOT ELEVATION
- BITUMINOUS BERM
- S OBSERVED SEWER LINE
- ⊙ OBSERVED SEWER MANHOLE
- D OBSERVED DRAIN LINE
- ⊙ CATCH BASIN
- ⊙ DRAIN MANHOLE
- G COMPILED GAS LINE
- ⊕ GAS GATE
- OHW OVERHEAD WIRES
- E COMPILED ELECTRIC LINE
- UTILITY POLE
- W COMPILED WATER LINE
- WATER GATE
- WETLAND FLAG
- ↓ VEGETATED WETLANDS

390 GROVE STREET

RECORD CONDITIONS PLAN OF LAND

LOCATED IN
NEEDHAM, MASSACHUSETTS
(NORFOLK COUNTY)
PREPARED FOR
MORITZ SCHMIDT

MERIDIAN
ASSOCIATES

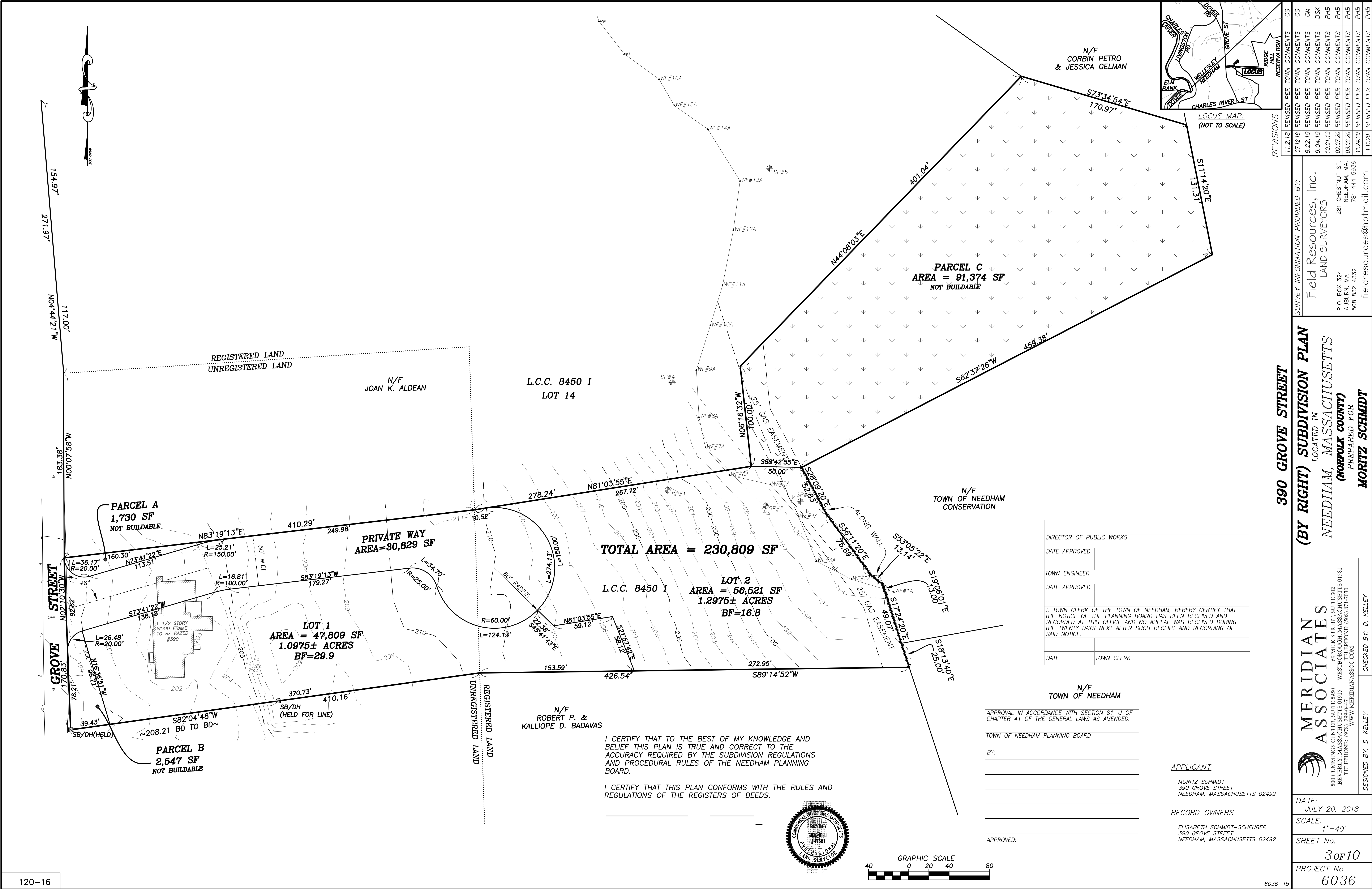
500 CUMMINGS CENTER, SUITE 5950
BEVERLY, MASSACHUSETTS 01915
TELEPHONE: (978) 299-4447
WWW.MERIDIANASSOC.COM

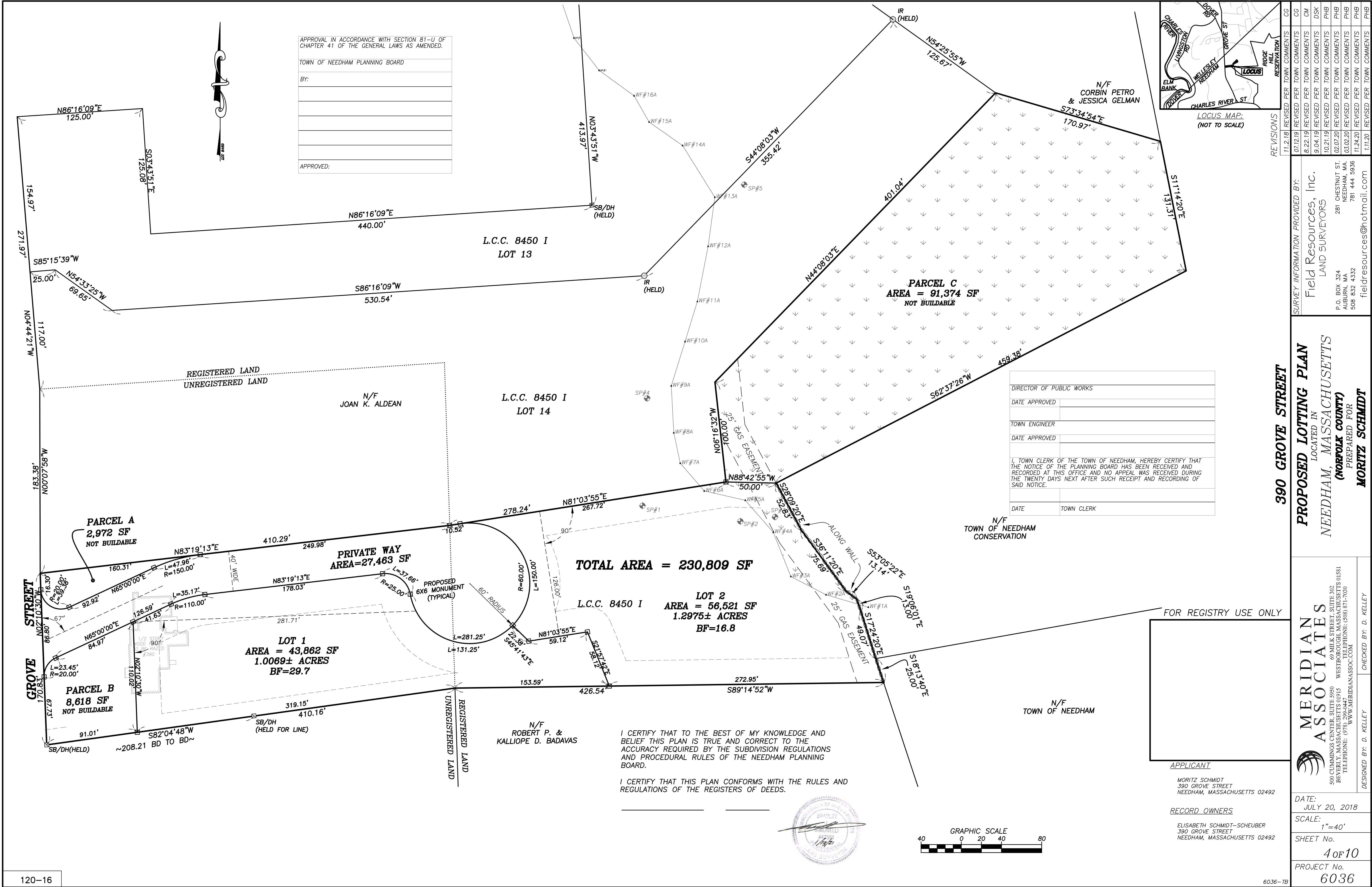
DESIGNED BY: D. KELLEY

CHECKED BY: D. KELLEY

DATE:
JULY 20, 2018
SCALE:
1"=40'
SHEET No.
2 of 10
PROJECT No.
6036

6036-TB





SOILS INFORMATION

TEST PIT PERFORMED ON AUGUST 18, 2020
BY ALEXANDER F. PARKER (CERTIFIED SOIL
EVALUATOR #1848)

TEST PIT: TP-20-1
0"-36" C: SANDY LOAM
36"-41" App: SANDY LOAM
41"-54" Bw: SANDY LOAM
54"-120" 2C: SANDY LOAM
E.S.H.G.W. @ 59"
NO WEEPING OBSERVED

SOILS INFORMATION

TEST PITS WERE PERFORMED ON SEPTEMBER 11, 2017 BY
ANDREW P. RODRIGUEZ (CERTIFIED SOIL EVALUATOR #1890)

TEST PIT: TP-1 ELEV.=207.5
0"-10" AP: SANDY LOAM
10"-26" B: SANDY LOAM
26"-80" C: GRAVELY SANDY LOAM
E.S.H.G.W. @ 36"
E.S.H.G.W. ELEV.=204.5
NO WEEPING OBSERVED

EST PIT: TP-2 ELEV.=210.1
0"-7" AP: SANDY LOAM
7"-23" B: SANDY LOAM
23"-90" C: GRAVELY SANDY LOAM
E.S.H.G.W. @ 38"
E.S.H.G.W. ELEV.=206.9
NO WEEPING OBSERVED

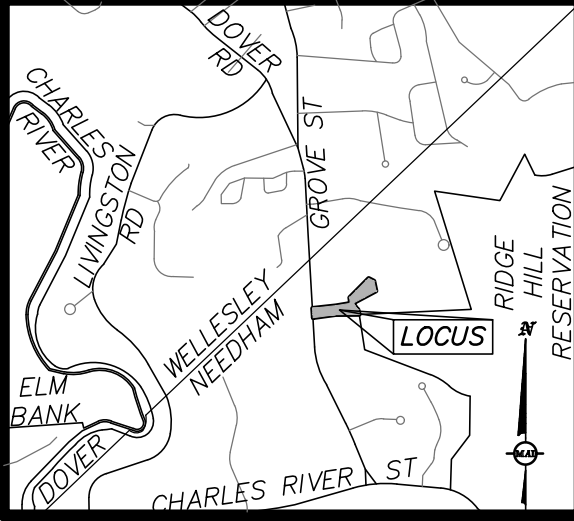
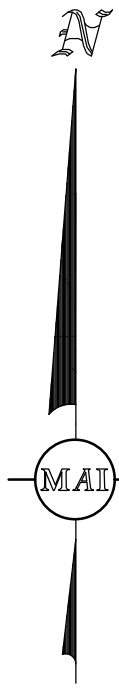
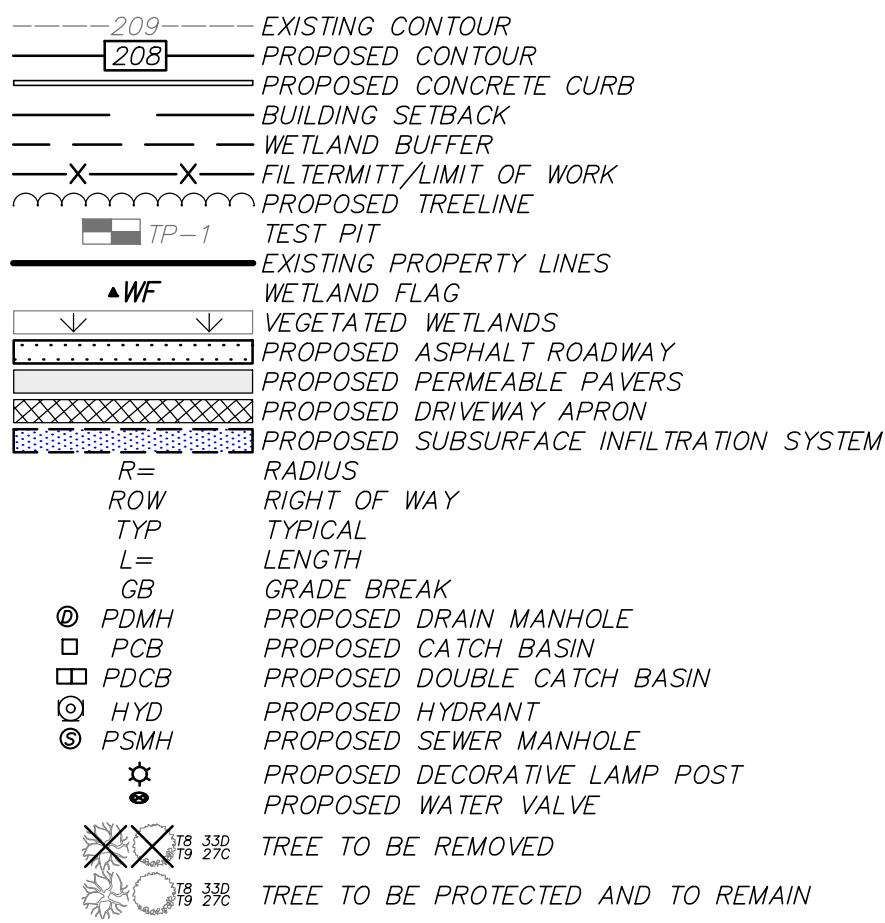
TEST PIT: TP-3 ELEV.=209.5
0"-13" AP: SANDY LOAM
13"-24" B: SANDY LOAM
24"-52" C: SANDY LOAM
52"-92" C2: GRAVELY LOAMY SAND
E.S.H.G.W. NOT OBSERVED
E.S.H.G.W. ELEV.=201.8
NO WEEPING OBSERVED

TEST PIT: TP-4 ELEV.=209.5
0"-10" AP: SANDY LOAM
10"-26" B: SANDY LOAM
26"-74" C/D: SANDY LOAM GRAVELY
E.S.H.G.W. @ 29"
E.S.H.G.W. ELEV.=207.1
NO WEEPING OBSERVED

TEST PIT: TP-5 ELEV.=208.2
0"-22" HTM: SANDY LOAM
22"-42" C: SANDY LOAM GRAVEL
42"-86" C2: LOAMY SAND GRAVEL
E.S.H.G.W. NOT OBSERVED
E.S.H.G.W. ELEV.=201.2
NO WEEPING OBSERVED

TEST PIT: TP-6 ELEV.=208.2
0"-62" FILL: TRASH, GLASS
62"-102" C: SANDY LOAM
E.S.H.G.W. NOT OBSERVED
E.S.H.G.W. ELEV.=199.7
NO WEEPING OBSERVED

LEGEND



REVISIONS	DATE	REVISION
11.2.18	REVISED PER TOWN COMMENTS	DSK
07.12.19	REVISED PER TOWN COMMENTS	DSK
8.22.19	REVISED PER TOWN COMMENTS	DSK
9.04.19	REVISED PER TOWN COMMENTS	DSK
10.19.19	REVISED PER TOWN COMMENTS	DSK
02.07.20	REVISED PER TOWN COMMENTS	DSK
03.02.20	REVISED PER TOWN COMMENTS	DSK
11.24.20	REVISED PER TOWN COMMENTS	DSK
1.11.20	REVISED PER TOWN COMMENTS	DSK

SURVEY INFORMATION PROVIDED BY:
Field Resources, Inc.
LAND SURVEYORS
P.O. BOX 324
AUBURN, MA
508 832 4332
fieldresources@hotmail.com

PROPOSED SITE & GRADING PLAN
LOCATED IN
NEEDHAM, MASSACHUSETTS
(NORFOLK COUNTY)
PREPARED FOR
MORITZ SCHMIDT

MERIDIAN ASSOCIATES
500 CUMMINGS CENTER SUITE 5950
BEVERLY, MASSACHUSETTS 01915
TELEPHONE: (978) 299-4447
WWW.MERIDIANASSOC.COM
DESIGNED BY: D. KELLEY

DATE:
JULY 20, 2018
SCALE:
1"=40'
SHEET No.
5 OF 10
PROJECT No.
6036

6036-SITE



I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THIS PLAN IS
TRUE AND CORRECT TO THE ACCURACY REQUIRED BY THE SUBDIVISION
REGULATIONS AND PROCEDURAL RULES OF THE NEEDHAM PLANNING BOARD.

REGISTERED CIVIL ENGINEER, PE

DIRECTOR OF PUBLIC WORKS

DATE APPROVED

TOWN ENGINEER

DATE APPROVED

I, TOWN CLERK OF THE TOWN OF NEEDHAM, HEREBY CERTIFY THAT
THE NOTICE OF THE PLANNING BOARD HAS BEEN RECEIVED AND
RECORDED AT THIS OFFICE AND NO APPEAL WAS RECEIVED DURING
THE TWENTY DAYS NEXT AFTER SUCH RECEIPT AND RECORDING OF
SAID NOTICE.

DATE TOWN CLERK

APPROVAL IN ACCORDANCE WITH SECTION 81-U OF
CHAPTER 41 OF THE GENERAL LAWS AS AMENDED.

TOWN OF NEEDHAM PLANNING BOARD

BY:

APPLICANT

MORITZ SCHMIDT
390 GROVE STREET
NEEDHAM, MASSACHUSETTS 02492

RECORD OWNERS

ELISABETH SCHMIDT-SCHUEBER
390 GROVE STREET
NEEDHAM, MASSACHUSETTS 02492

APPROVED:

POST CONSTRUCTION NOTES

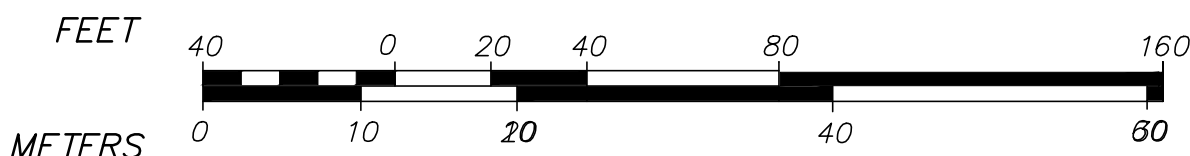
1. STORMWATER MANAGEMENT POST CONSTRUCTION INSPECTION
DOCUMENTS SHOULD INCLUDE A NOTE THAT IF EVIDENCE OF
OVERFLOW INTO THE TOWN'S DRAINAGE SYSTEM HAS
OCCURRED, INSPECTION DOCUMENTS SHOULD BE AVAILABLE
FOR THE TOWN'S NPDES COORDINATOR TO RECEIVE COPIES
UPON REQUEST.

TEMPORARY BENCHMARK CHART:

T.B.M.#	DESCRIPTION	ELEVATION
△	CATCH BASIN RIM	197.62

GRAPHIC SCALE

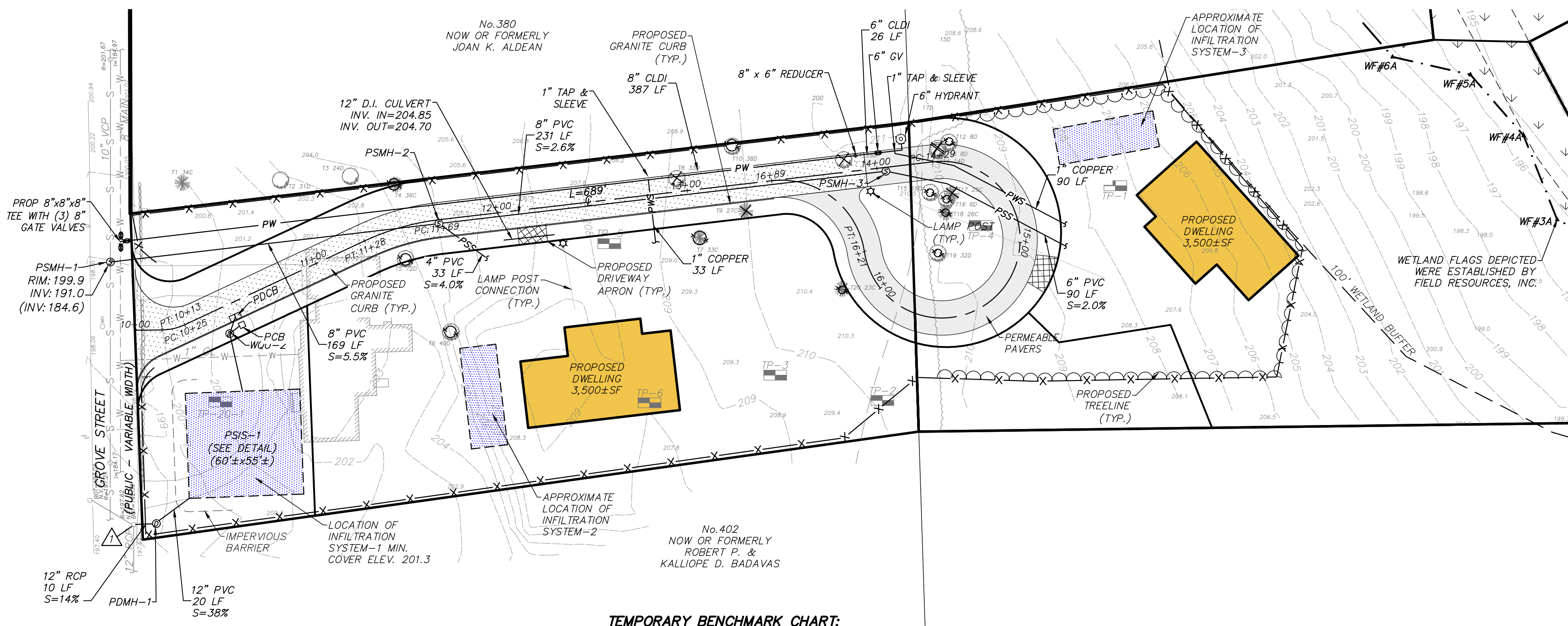
SCALE: 1"= 40'



NOTES

1. THE SUBJECT PROPERTY IS LOCATED IN ZONE SRA (SINGLE RESIDENCE A).
2. THE SUBJECT PROPERTY IS DEPICTED AS LOT 9 ON TOWN OF NEEDHAM ASSESSOR'S MAP 221.
3. REFER TO THE 'LOTING PLAN', SHEET 4 OF 9 OF THE PLAN SET FOR METES AND BOUNDS
DESCRIPTIONS OF THE EXISTING AND PROPOSED LOTS AND RIGHT-OF-WAY.
4. THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN ARE APPROXIMATE AND ARE BASED UPON A
PARTIAL FIELD SURVEY AND COMPILED OF PLANS OF RECORD. MERIDIAN ASSOCIATES, INC. DOES NOT
WARRANTY NOR GUARANTEE THE LOCATION OF ALL UTILITIES DEPICTED OR NOT DEPICTED. THE
CONTRACTOR, PRIOR TO COMMENCEMENT OF CONSTRUCTION, SHALL VERIFY THE LOCATION OF ALL
UTILITIES AND CONTACT DIG SAFE AT 1-888-344-7233.
5. THE SUBJECT PREMISES IS LOCATED IN THE FOLLOWING FLOOD ZONES PER FEMA FLOOD INSURANCE
RATE MAP NUMBER 25021C0018E DATED JULY 17, 2012:

- FLOOD ZONE X (UNSHADED), AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE
FLOODPLAIN

6036
by Meridian Associates, Inc. All rights reserved.



SURVEY INFORMATION PROVIDED BY:

Field Resources, Inc.

LAND SURVEYORS

P.O. BOX 324
AUBURN, MA
508 832 4332

281 CHESTNUT ST.
NEEDHAM, MA
781 444 5900

fieldresources@hotmail.com

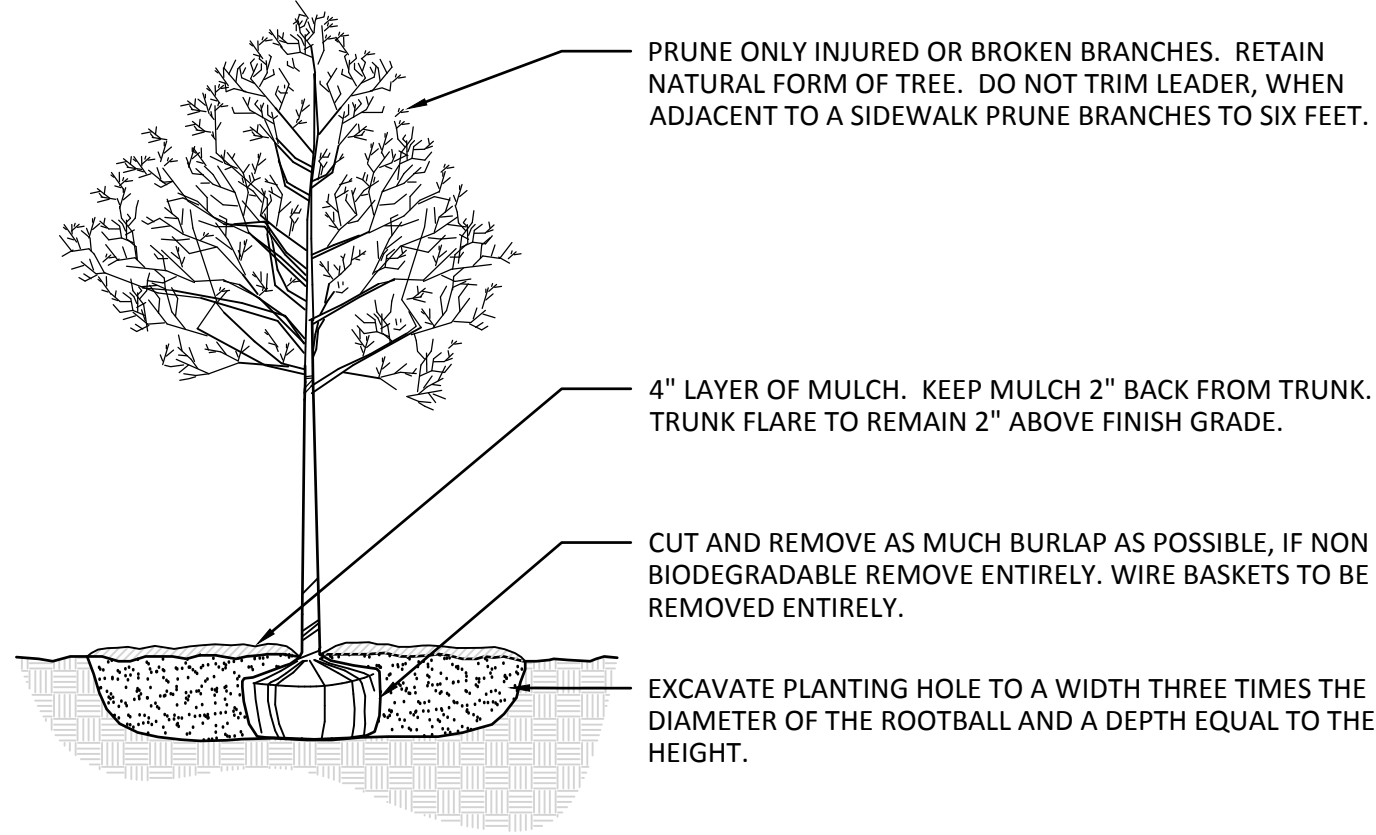
 MERIDIAN ASSOCIATES 500 CUMMINGS CENTER, SUITE 5950 BEVERLY, MASSACHUSETTS 01915 TELEPHONE: (978) 294-0447 WWW.MERIDIANASSOC.COM	<i>DESIGNED BY: D. KELLEY</i> <i>CHECKED BY: D. KELLEY</i>
---	--

DATE: JULY 20, 2018	SCALE: 1"=20'
	SHEET No. 7 OF 10
	PROJECT No. 6036

ABBREVIATIONS:
B&B: BALL AND BURLAP
CAL: CALIPER
DR: DEER RESISTANT
DT: DROUGHT TOLERANT
N: NATIVE
OC: ON CENTER
ST: SALT TOLERANT

ELISABETH SCHMIDT-SCHEUBER
390 GROVE STREET
NEEDHAM, MASSACHUSETTS 02492

APPROVED:



NOTES:

BACKFILL PLANTING HOLE WITH EXISTING SOIL AMENDED AS NECESSARY.

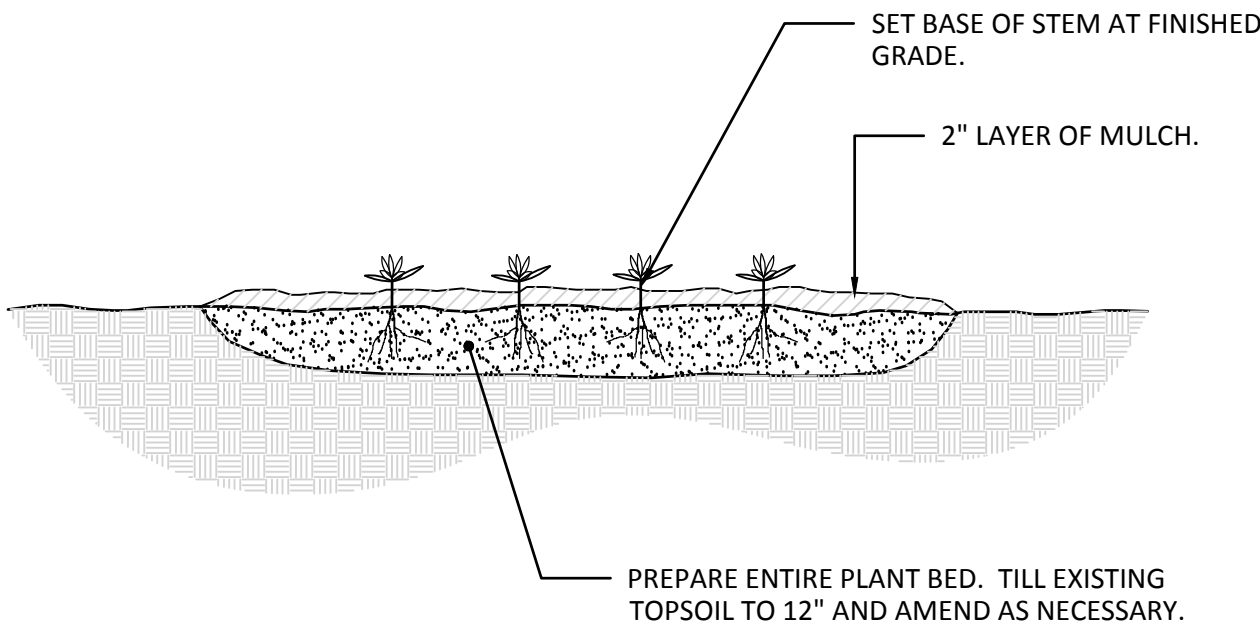
BACKFILL HALF THE SOIL AND WATER TO SETTLE OUT AIR POCKETS, COMPLETE BACKFILLING AND REPEAT WATERING.

IF ROOTS ARE CIRCLING THE ROOTBALL EXTERIOR, CUT ROOTS VERTICALLY IN SEVERAL PLACES PRIOR TO PLANTING.

ONLY STAKE TREES SITUATED ON WINDY SITES OR EXPOSED TO SUBSTANTIAL PEDESTRIAN TRAFFIC.

TREE PLANTING

NOT TO SCALE

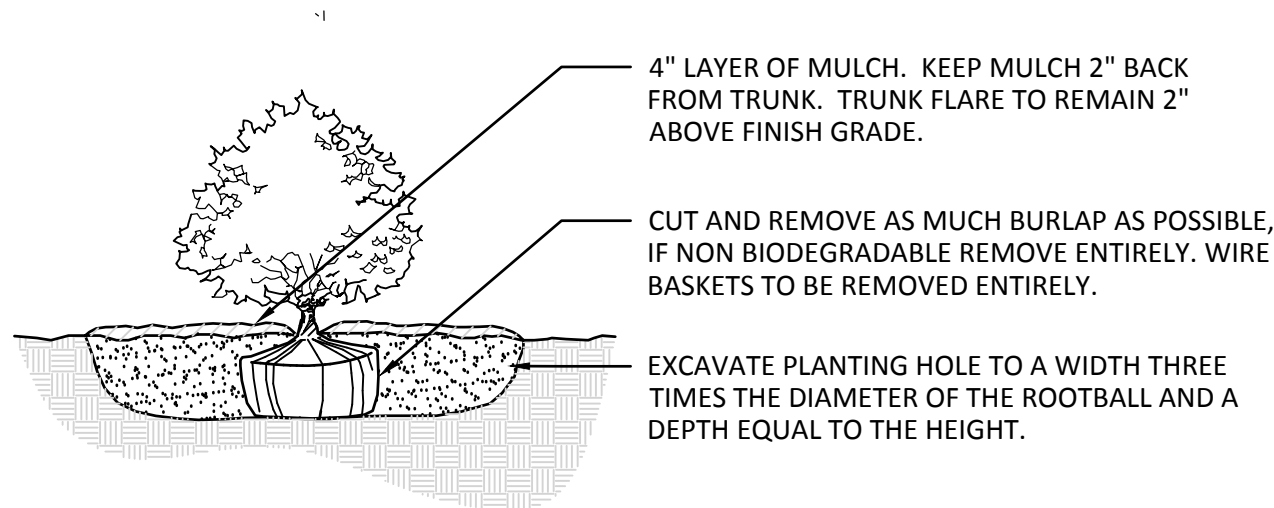


NOTE:

SPACE PLANTS EQUALLY TO PROVIDE CONSISTANT COVER OVER INDICATED PLANTING BED.

GROUNDCOVER PLANTING

(NOT TO SCALE)



NOTES:

BACKFILL PLANTING HOLE WITH EXISTING SOIL AMENDED AS NECESSARY.

BACKFILL HALF THE SOIL AND WATER TO SETTLE OUT AIR POCKETS, COMPLETE BACKFILLING AND REPEAT WATERING.

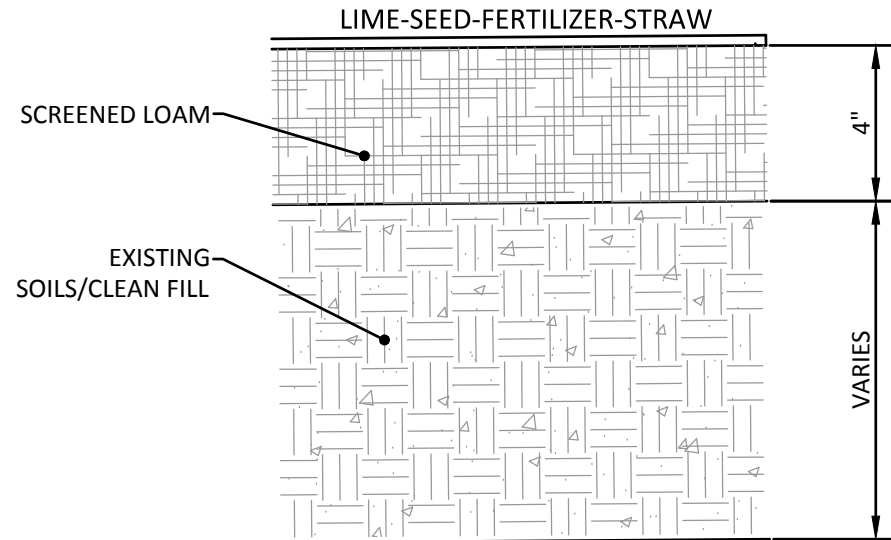
IF ROOTS ARE CIRCLING THE ROOTBALL EXTERIOR, CUT ROOTS VERTICALLY IN SEVERAL PLACES PRIOR TO PLANTING.

SHRUB PLANTING

(NOT TO SCALE)

LANDSCAPE NOTES:

- ALL PLANT MATERIAL SHALL CONFORM TO THE MINIMUM GUIDELINES ESTABLISHED BY THE "AMERICAN STANDARD FOR NURSERY STOCK" PUBLISHED BY AmericanHort 2014 AND AS AMENDED.
- ALL PLANT MATERIALS SHALL BE GUARANTEED FOR ONE YEAR FOLLOWING DATE OF FINAL ACCEPTANCE.
- VERIFY LOCATIONS OF ALL EXISTING UTILITY LINES PRIOR TO PLANTING AND REPORT ANY CONFLICTS TO THE OWNER OR OWNER'S REPRESENTATIVE.
- PROVIDE TREES, SHRUBS, AND GROUNDCOVERS AS SHOWN AND SPECIFIED. THE WORK INCLUDES: SOIL PREPARATION, INSTALLATION OF TREES, SHRUBS AND GROUNDCOVERS, PLANTING MIXES, MULCH AND PLANTING ACCESSORIES, WARRANTY, WATERING AND MAINTENANCE DURING CONSTRUCTION AND WARRANTY PERIODS.
- BALLED AND BURLAPPED PLANTS MAY BE PLANTED IN THE SPRING FROM APRIL 1ST UNTIL JUNE 15TH AND IN THE FALL FROM AUGUST 15TH TO NOVEMBER 1ST.
- PLANTING PLAN IS DIAGRAMMATIC IN NATURE. FINAL PLACEMENT OF PLANTS TO BE APPROVED BY THE LANDSCAPE ARCHITECT IN THE FIELD.
- ALL SHADE TREES ALONG SIDEWALKS SHALL HAVE A MINIMUM SIX (6) FOOT BRANCHING HEIGHT.
- PLANT MATERIALS DEPICTED IN ROWS SHALL CONTAIN MATCHING PLANT SPECIMENS SPACED EQUALLY ALONG INDICATED AREA.
- ALL PLANT MATERIALS AND LAWN AREAS TO BE MAINTAINED BY LANDSCAPE CONTRACTOR UNTIL FINAL WRITTEN ACCEPTANCE PROVIDED TO CONTRACTOR BY OWNER OR OWNER'S REPRESENTATIVE.
- ALL PLANT MATERIALS TO REMAIN ALIVE AND BE IN HEALTHY, VIGOROUS CONDITION AND SHALL BE GUARANTEED FOR ONE YEAR FOLLOWING DATE OF FINAL WRITTEN ACCEPTANCE FROM THE OWNER OR OWNER'S REPRESENTATIVE.
- ALL PLANT MATERIALS ARE INTENDED TO BE DROUGHT TOLERANT ONCE ESTABLISHED. NO IRRIGATION SYSTEM IS PROPOSED.
- LOAM AND SEED ALL DISTURBED AREAS UNLESS OTHERWISE INDICATED ON PLAN. LOAM WITH TOPSOIL SPREAD TO A MINIMUM DEPTH OF (6) SIX INCHES.
- SEED OR PROVIDE SOD FOR ALL TURFGRASS LAWN AREAS WITH A DROUGHT TOLERANT TURFGRASS SEED MIX (80% TALL FESCUE, 10% PERENNIAL RYEGRASS, 10% KENTUCKY BLUEGRASS).
- PERENNIALS, BULBS AND ANNUALS ARE TO BE PLANTED IN A WELL PREPARED BED WHICH SHALL INCLUDE PEAT AND SLOW RELEASE FERTILIZER. BEDS SHALL BE SKIMMED WITH ONE AND ONE-HALF (1-1/2) INCH TO TWO (2) INCH MULCH (INCLUDING GROUNDCOVERS).



TYPICAL LOAM & SEED CROSS - SECTION

NOT TO SCALE



01/11/2021

I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THIS PLAN IS TRUE AND CORRECT TO THE ACCURACY REQUIRED BY THE SUBDIVISION REGULATIONS AND PROCEDURAL RULES OF THE NEEDHAM PLANNING BOARD.

REGISTERED CIVIL ENGINEER, PE

DIRECTOR OF PUBLIC WORKS

DATE APPROVED

TOWN ENGINEER

DATE APPROVED

I, TOWN CLERK OF THE TOWN OF NEEDHAM, HEREBY CERTIFY THAT THE NOTICE OF THE PLANNING BOARD HAS BEEN RECEIVED AND RECORDED AT THIS OFFICE AND NO APPEAL WAS RECEIVED DURING THE TWENTY DAYS NEXT AFTER SUCH RECEIPT AND RECORDING OF SAID NOTICE.

DATE TOWN CLERK

APPROVAL IN ACCORDANCE WITH SECTION 81-U OF CHAPTER 41 OF THE GENERAL LAWS AS AMENDED.

TOWN OF NEEDHAM PLANNING BOARD

BY:

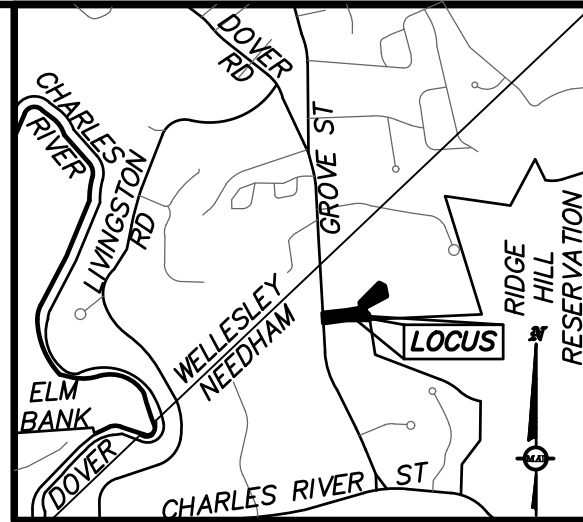
APPLICANT

MORITZ SCHMIDT
390 GROVE STREET
NEEDHAM, MASSACHUSETTS 02492

RECORD OWNERS

ELISABETH SCHMIDT-SCHUEBER
390 GROVE STREET
NEEDHAM, MASSACHUSETTS 02492

APPROVED:



LOCUS MAP:
(NOT TO SCALE)

390 GROVE STREET

PROPOSED LANDSCAPE DETAILS
LOCATED IN
NEEDHAM, MASSACHUSETTS
(NORFOLK COUNTY)
PREPARED FOR
MORITZ SCHMIDT

MERIDIAN ASSOCIATES



500 CUMMINGS CENTER, SUITE 5950
BEVERLY, MASSACHUSETTS 01915
TELEPHONE: (978) 299-4447
WWW.MERIDIANASSOC.COM

69 MILK STREET, SUITE 208
WESTBROOK, MASSACHUSETTS 01581
TELEPHONE: (508) 871-7030

DESIGNED BY: D. KELLEY

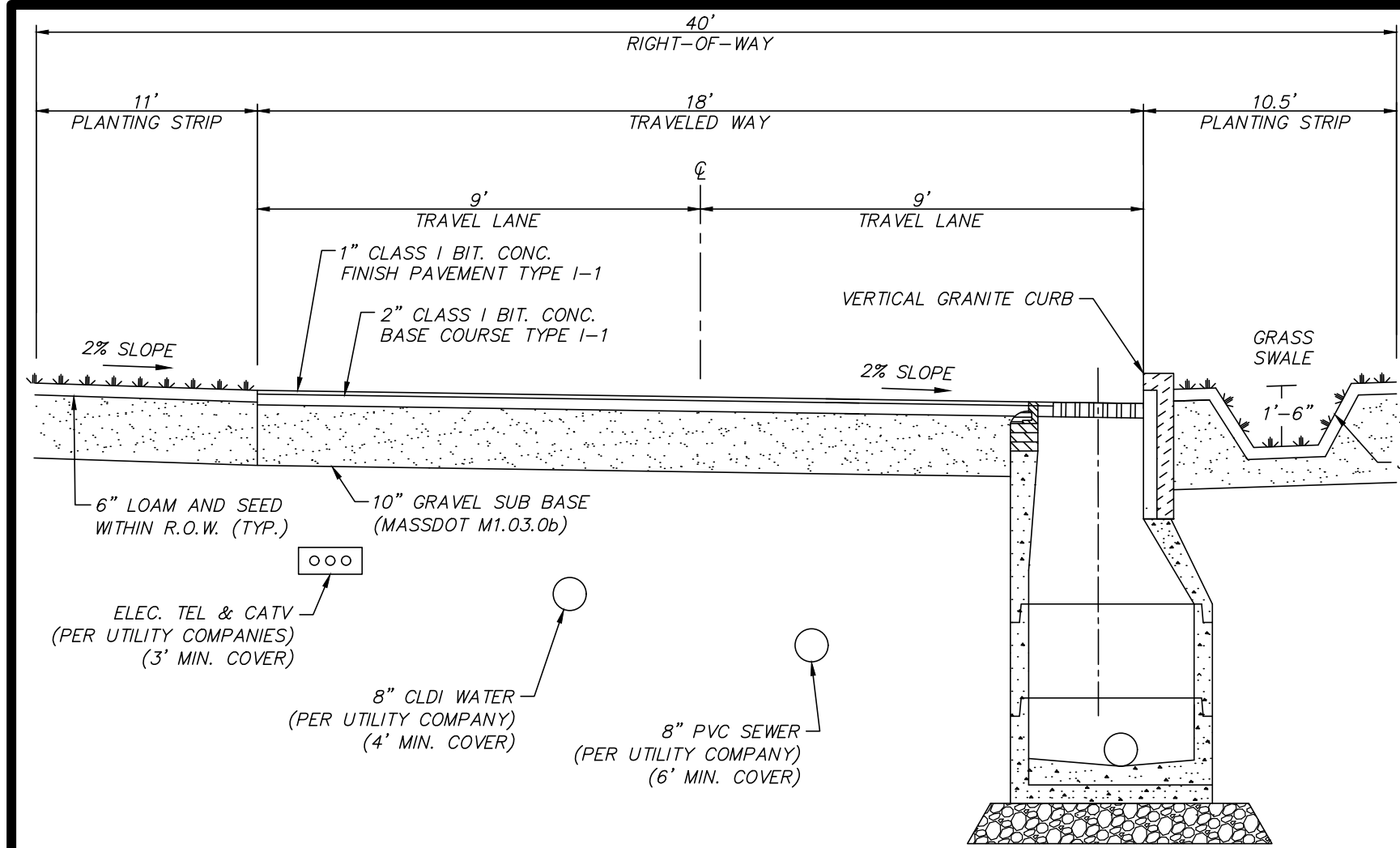
CHECKED BY: D. KELLEY

DATE:
JULY 20, 2018

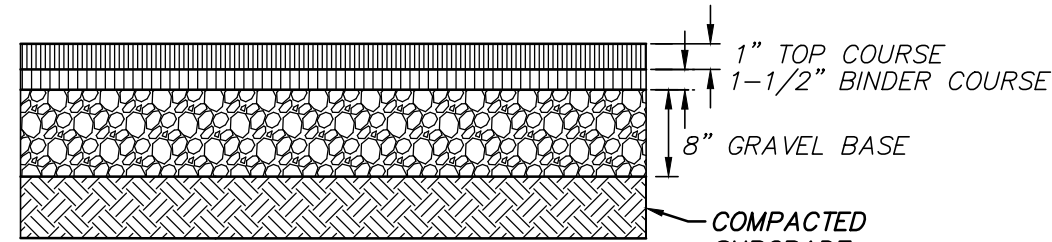
SCALE:
AS NOTED

SHEET No.
8 OF 10

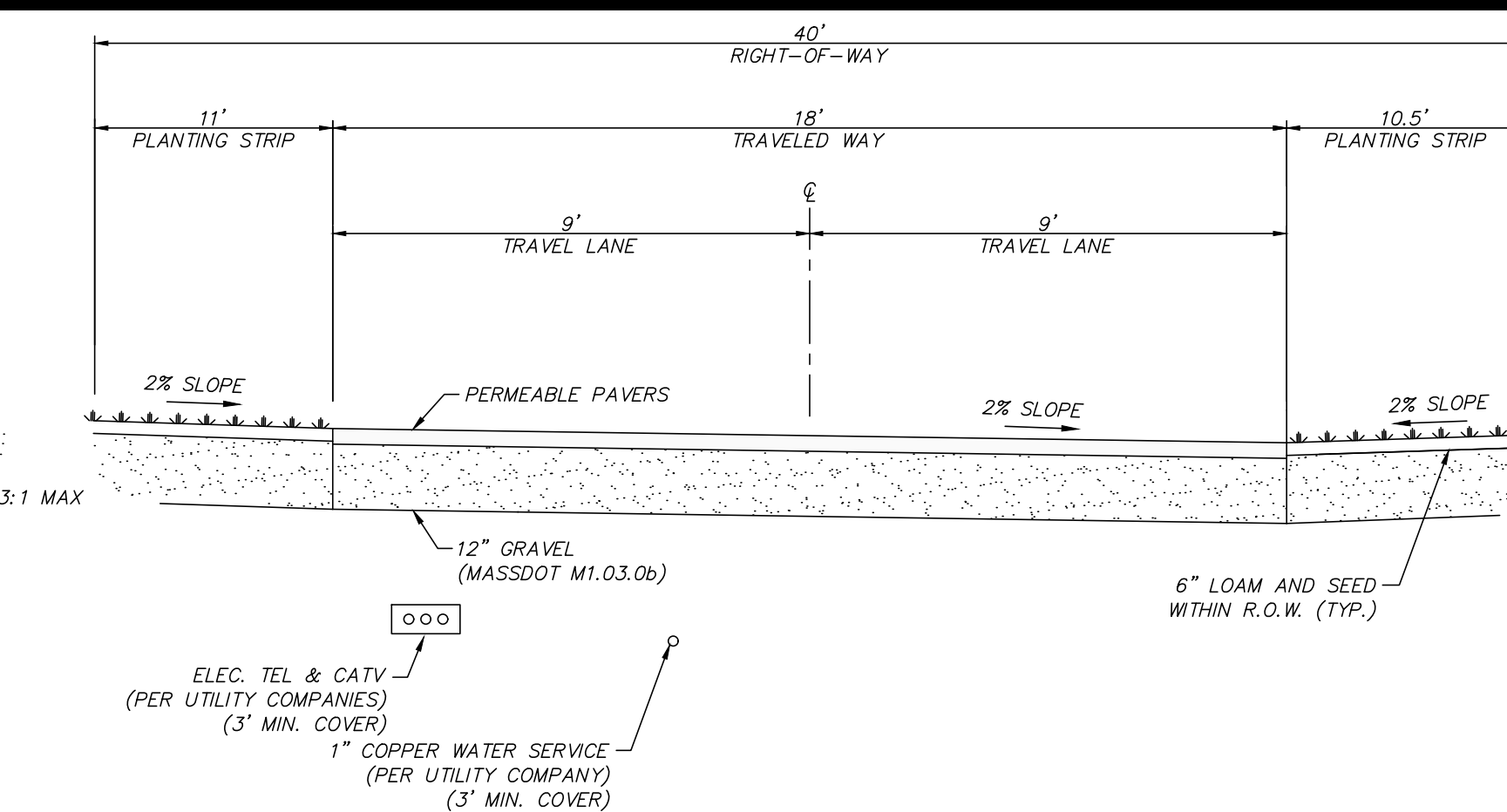
PROJECT No.
6036



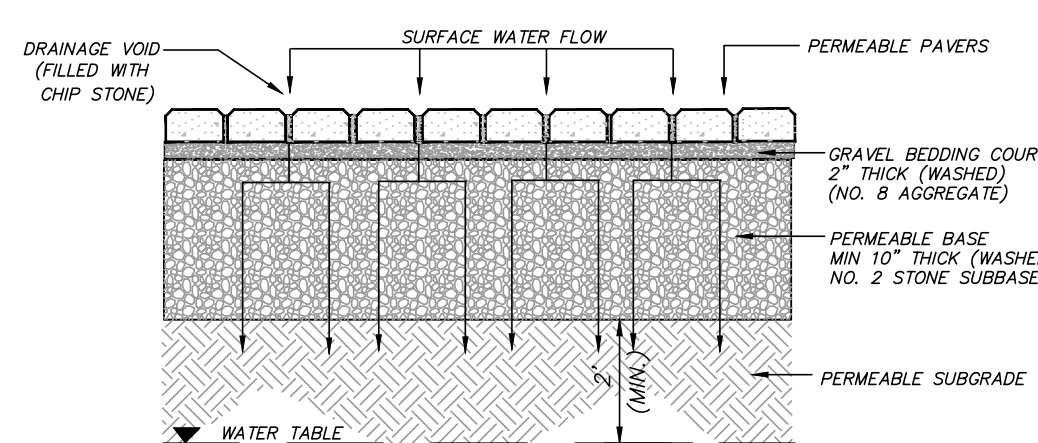
TYPICAL ROAD CROSS SECTION
(NOT TO SCALE)



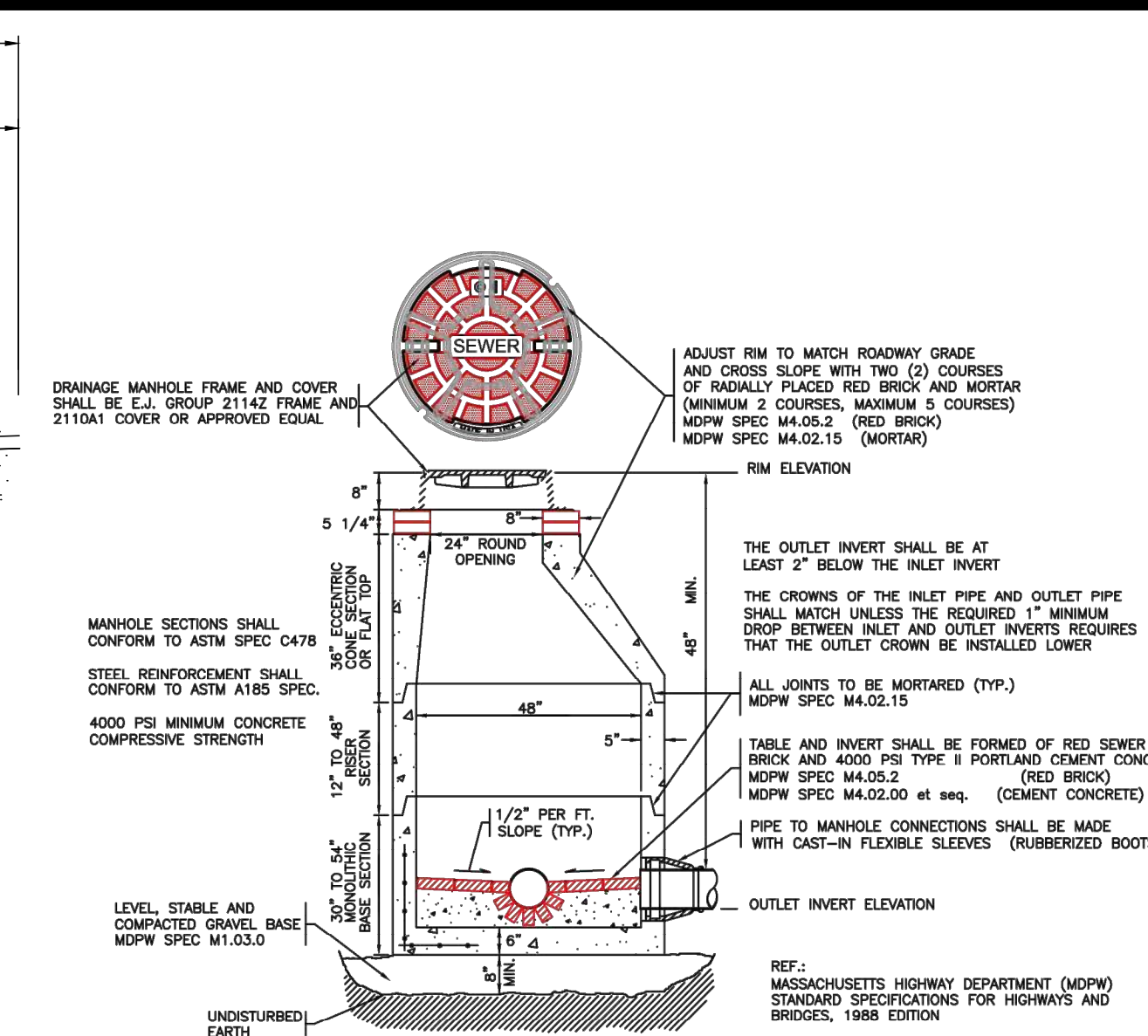
BITUMINOUS CONCRETE PAVEMENT SECTION
(NOT TO SCALE)



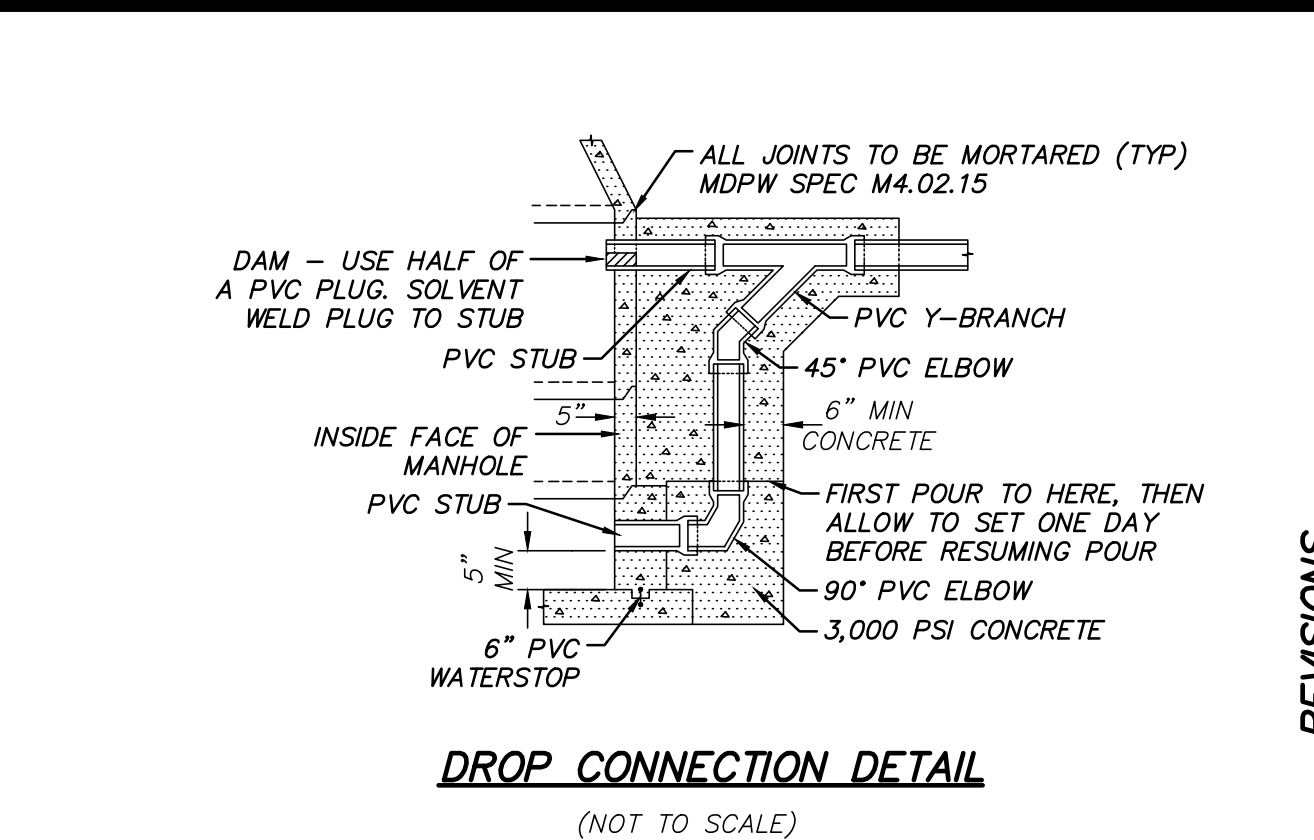
PERMEABLE PAVERS CROSS SECTION
(NOT TO SCALE)



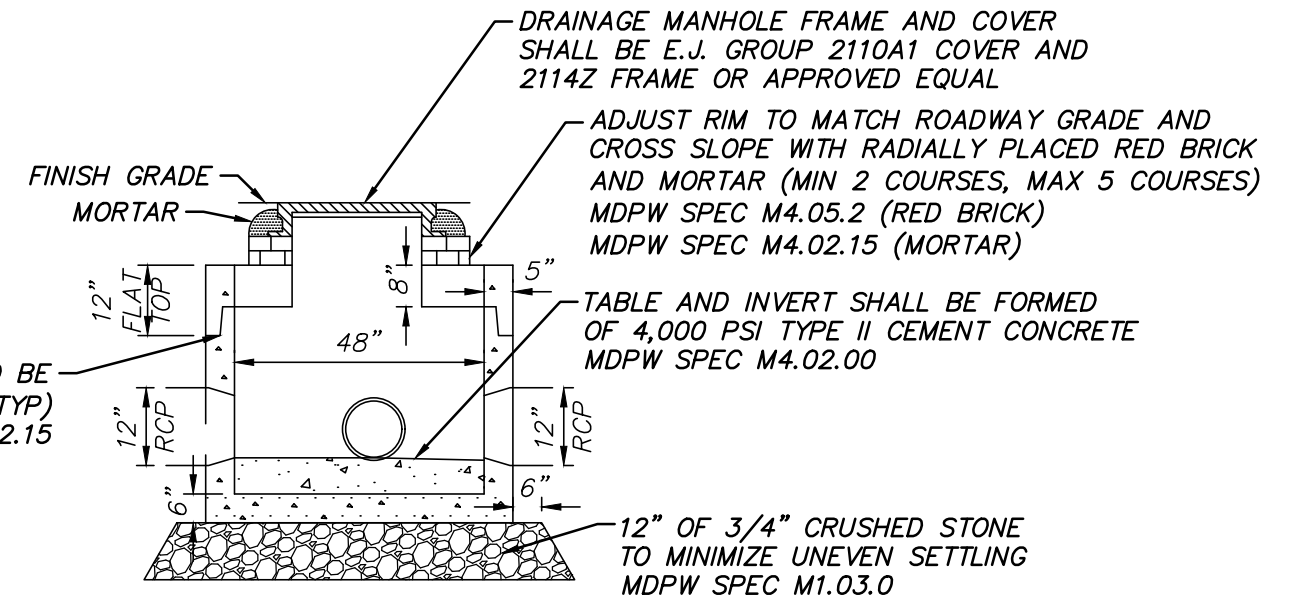
TYPICAL PERMEABLE PAVER DETAIL
(NOT TO SCALE)



TYPICAL SEWER MANHOLE DETAIL
(NOT TO SCALE)



DROP CONNECTION DETAIL
(NOT TO SCALE)



FLAT TOP DRAIN MANHOLE DETAIL
(NOT TO SCALE)

- NOTES:
1. MANHOLE DESIGN TO LATEST TOWN OF NEEDHAM STANDARDS AND ASTM C478.
 2. REINFORCING STEEL CONFORMS TO LATEST ASTM A185.
 3. CONCRETE COMPRESSIVE STRENGTH - 4,000 PSI @ 28 DAYS.
 4. ONE POUR MONOLITHIC BASE.
 5. WHEN SPECIFIED, MANHOLES WATERPROOF COATED.
 6. STEPS - STEEL REINFORCED COPOLYMER POLYPROPYLENE PLASTICS (PS2-PFSL M.A. INDUSTRIES, INC.) CONFORMS TO LATEST ASTM C478 PARA-12.
 7. REFERENCE: LATEST MASSACHUSETTS HIGHWAY DEPARTMENT (MDPW) STANDARD SPECIFICATIONS FOR HIGHWAYS AND BRIDGES.



I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THIS PLAN IS TRUE AND CORRECT TO THE ACCURACY REQUIRED BY THE SUBDIVISION REGULATIONS AND PROCEDURAL RULES OF THE NEEDHAM PLANNING BOARD.

REGISTERED CIVIL ENGINEER, PE

DIRECTOR OF PUBLIC WORKS

DATE APPROVED _____

TOWN ENGINEER

DATE APPROVED _____

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DATE TOWN CLERK

APPROVAL IN ACCORDANCE WITH SECTION 81-U OF CHAPTER 41 OF THE GENERAL LAWS AS AMENDED.

BY: _____

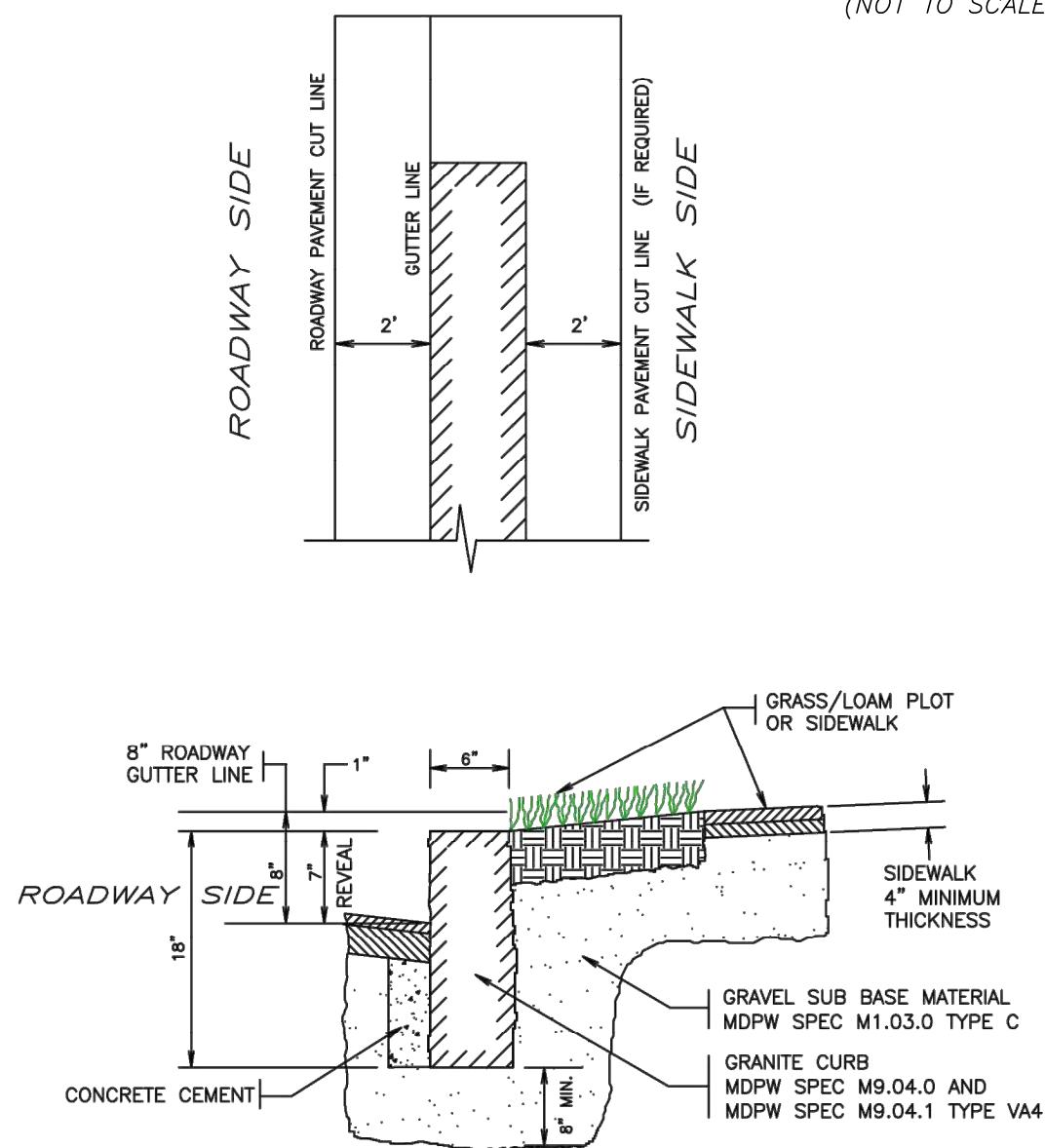
APPLICANT

MORITZ SCHMIDT
390 GROVE STREET
NEEDHAM, MASSACHUSETTS 02492

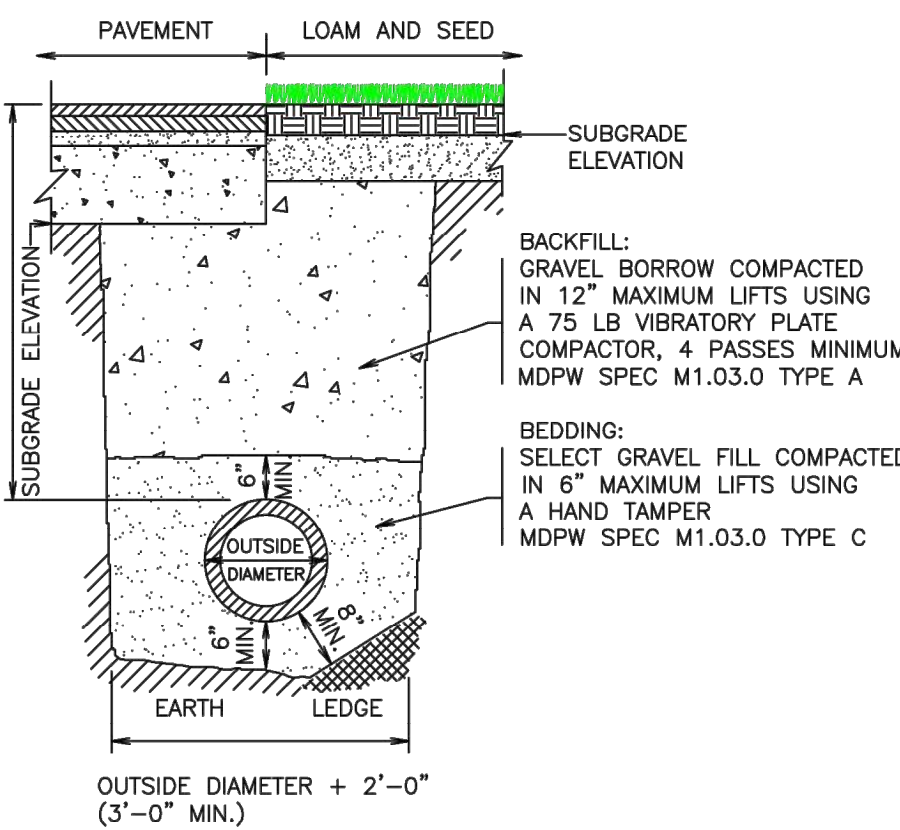
RECORD OWNERS

ELISABETH SCHMIDT-SCHUEBER
390 GROVE STREET
NEEDHAM, MASSACHUSETTS 02492

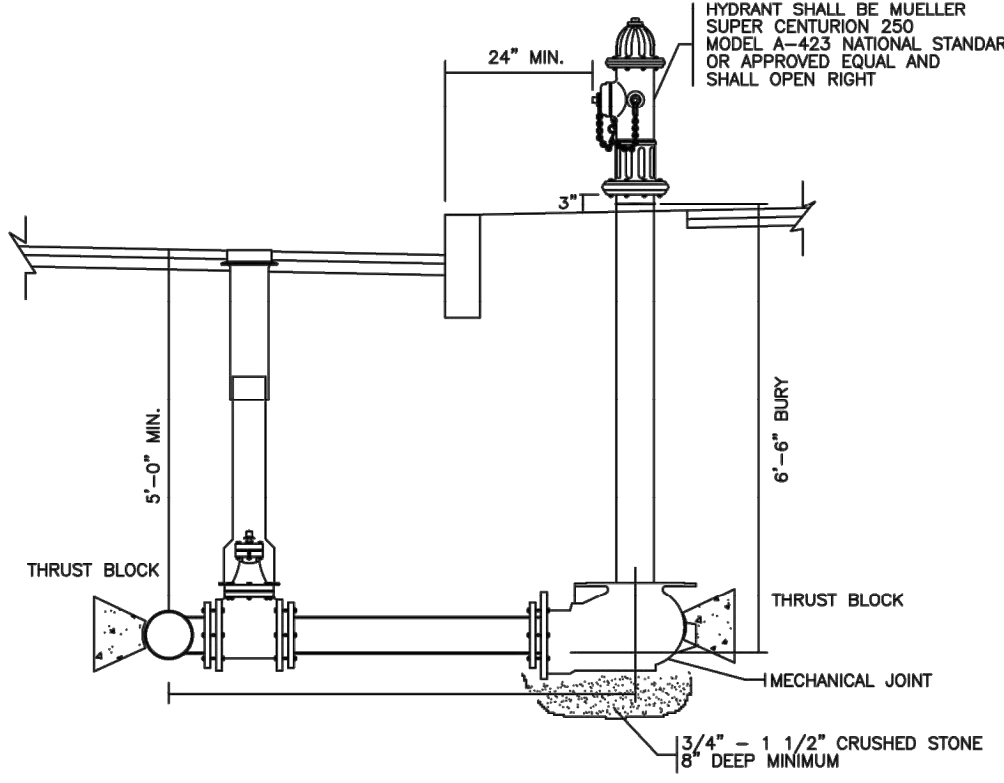
APPROVED: _____



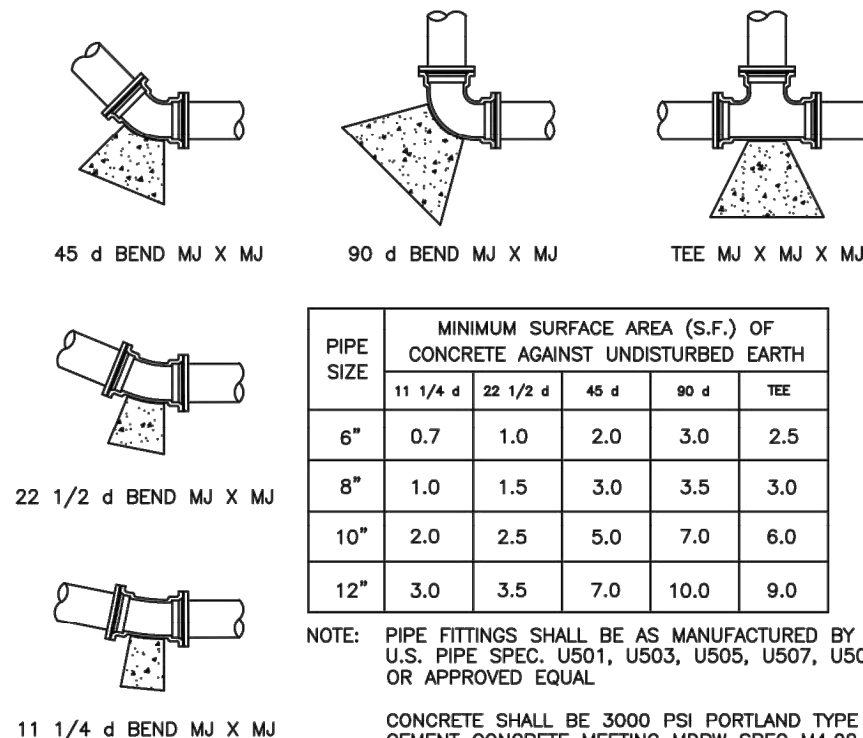
TYPICAL GRANITE CURB DETAIL
(NOT TO SCALE)



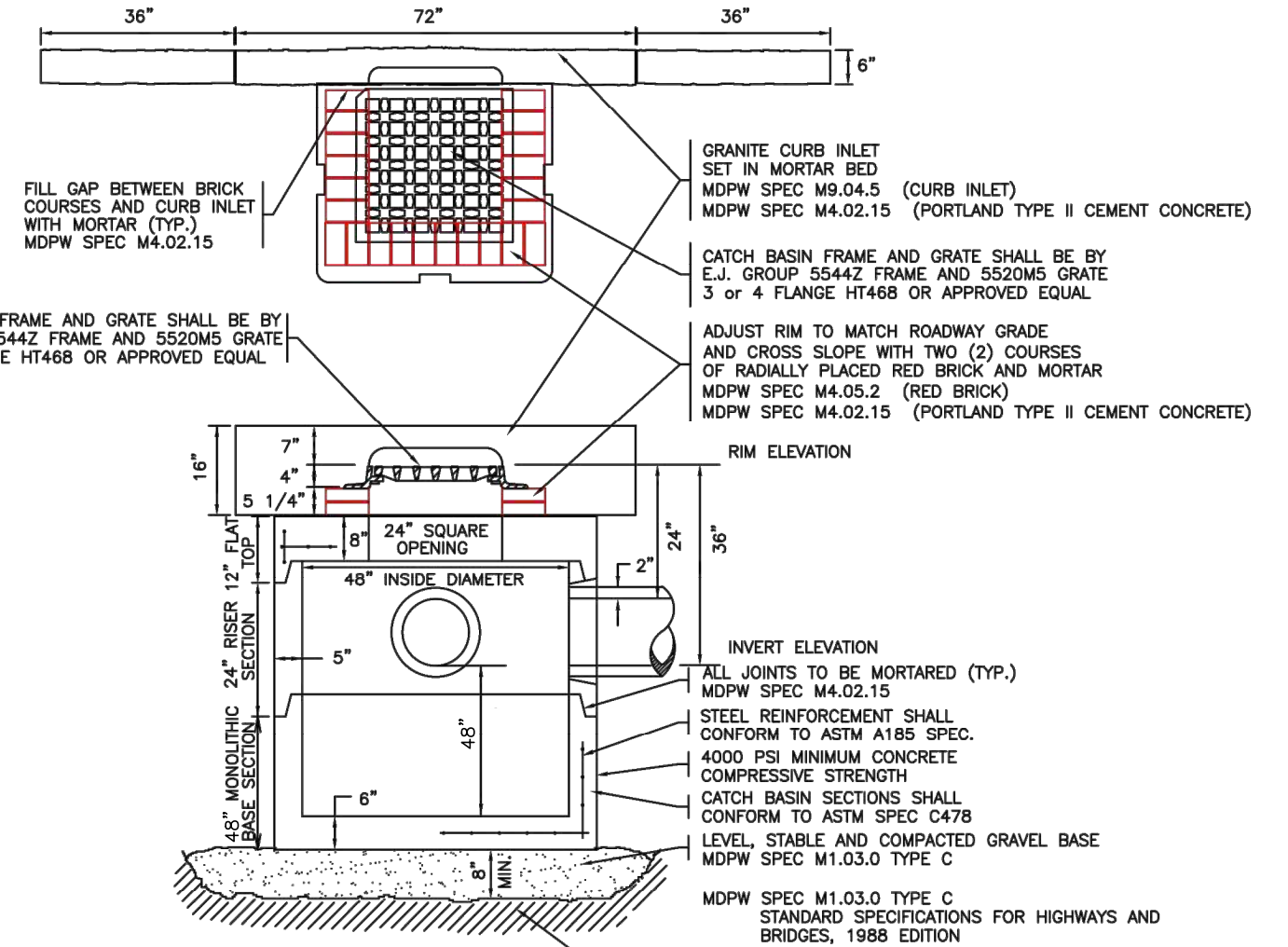
TYPICAL TRENCH DETAIL
(NOT TO SCALE)



TYPICAL FIRE HYDRANT DETAIL
(NOT TO SCALE)



TYPICAL THRUST BLOCK DETAIL
(NOT TO SCALE)



TYPICAL 24" CATCH BASIN DETAIL
(NOT TO SCALE)

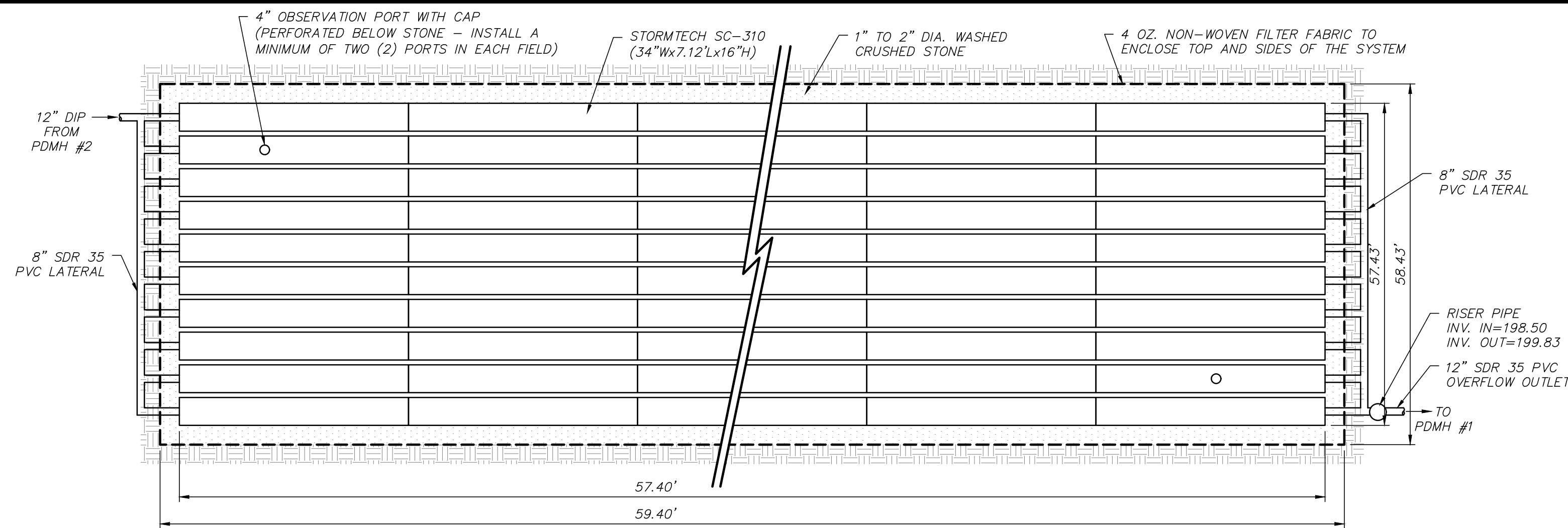
REVISIONS	DATE	REVISION
11.2.18	REVISED PER TOWN COMMENTS	DSK
07.12.19	REVISED PER TOWN COMMENTS	DSK
8.22.19	REVISED PER TOWN COMMENTS	DSK
9.04.19	REVISED PER TOWN COMMENTS	DSK
10.04.19	REVISED PER TOWN COMMENTS	DSK
02.07.20	REVISED PER TOWN COMMENTS	DSK
03.02.20	REVISED PER TOWN COMMENTS	DSK
11.24.20	REVISED PER TOWN COMMENTS	DSK
1.11.20	REVISED PER TOWN COMMENTS	DSK

SURVEY INFORMATION PROVIDED BY:
Field Resources, Inc.
LAND SURVEYORS
P.O. BOX 324
NEEDHAM, MA 02454
781 444 5936
fieldresources@hotmail.com

390 GROVE STREET
SITE DETAILS 1
LOCATED IN
NEEDHAM, MASSACHUSETTS
(NORFOLK COUNTY)
PREPARED FOR
MORITZ SCHMIDT

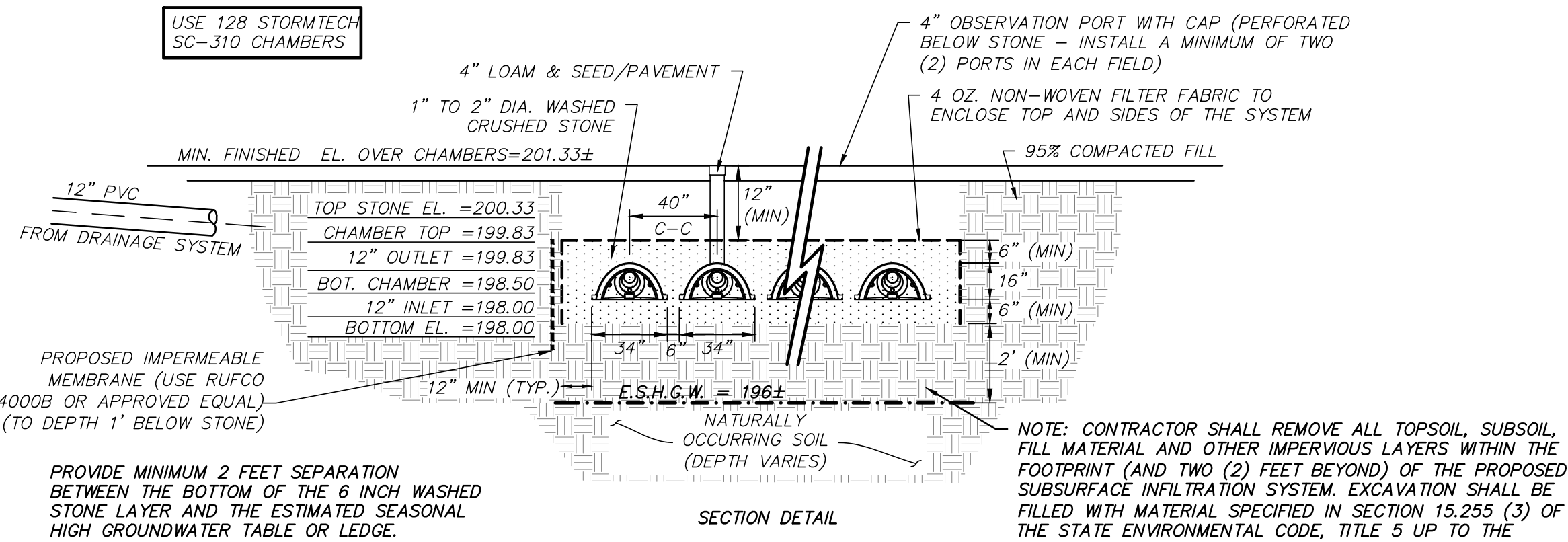
MERIDIAN ASSOCIATES
500 CUMMINGS CENTER SUITE 500
BEVERLY, MASSACHUSETTS 01915
TELEPHONE: (978) 299-0447
WWW.MERIDIANASSOC.COM

DATE: JULY 20, 2018
SCALE: 1"=40'
SHEET No. 9 OF 10
PROJECT No. 6036



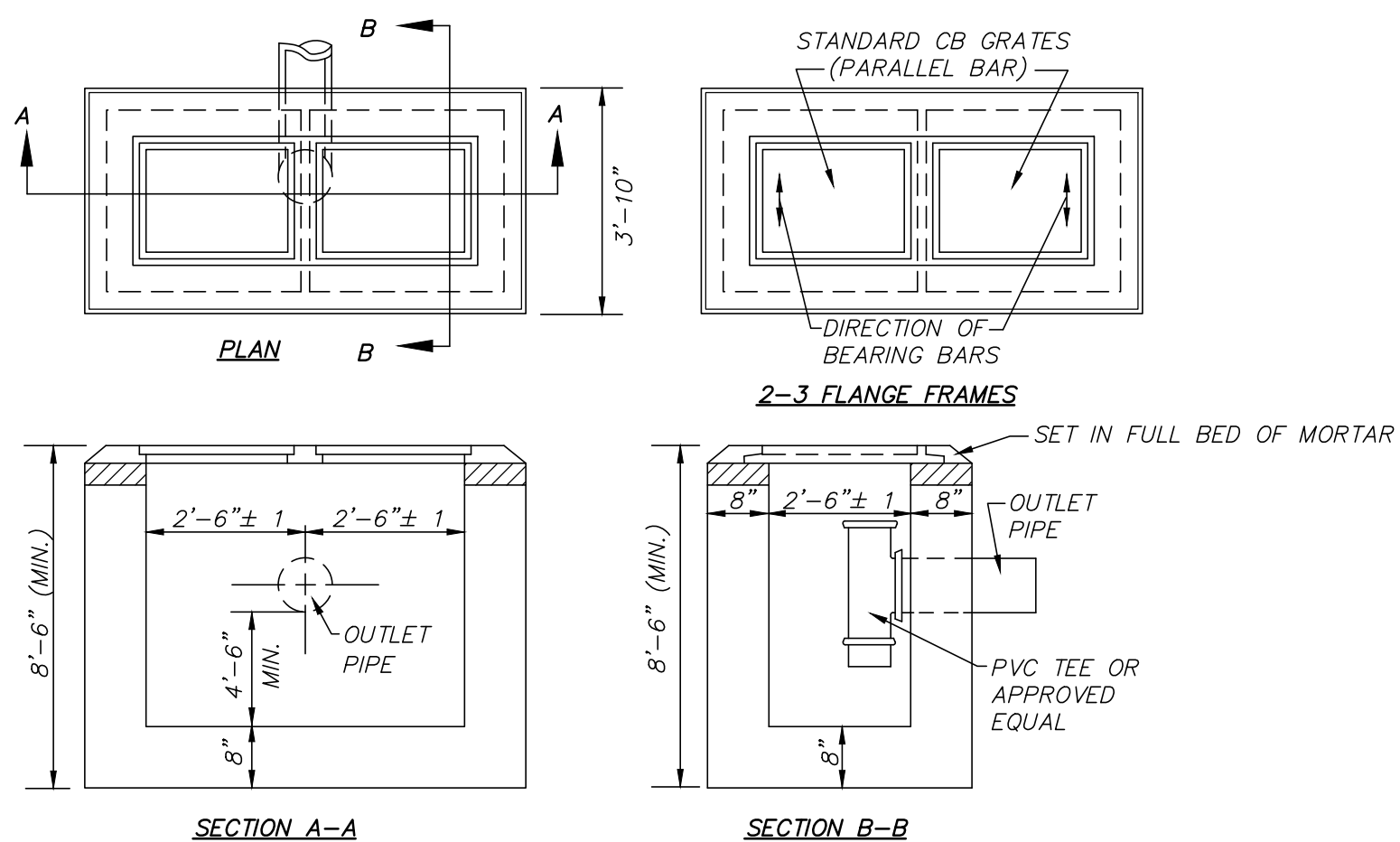
PROPOSED SUBSURFACE INFILTRATION SYSTEM-1 (PSIS-1) 16 ROWS OF 8 CHAMBERS

PROPOSED SUBSURFACE INFILTRATION SYSTEM-1 (PSIS-1) - PLAN VIEW
(NOT TO SCALE)



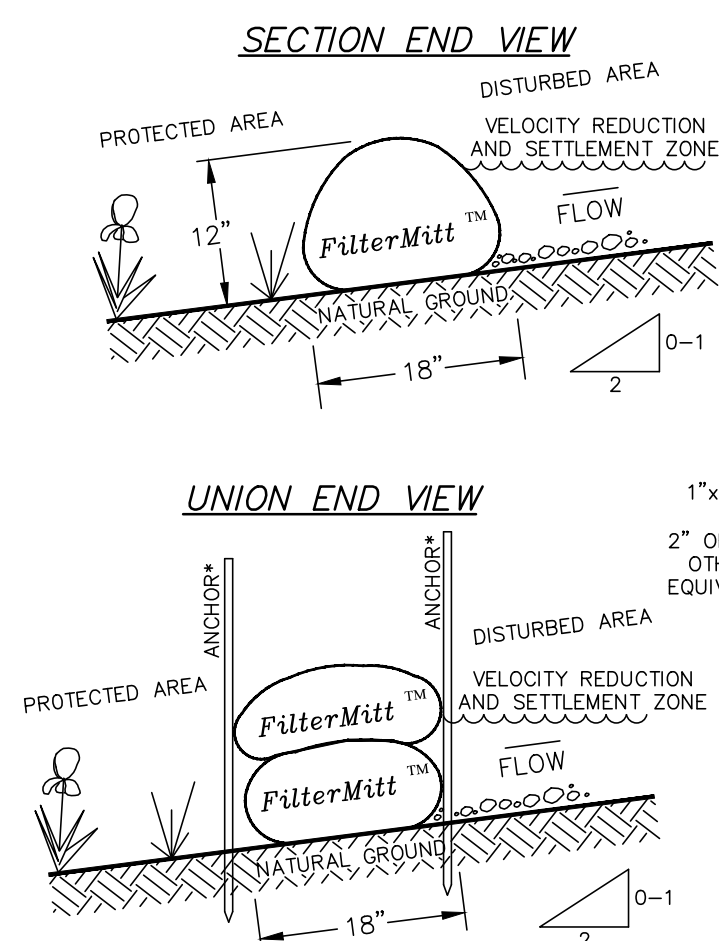
NOTES:
- C-C IS CENTER TO CENTER
- PROVIDE 6" MIN. SEPARATION BETWEEN ROWS OF CHAMBERS

PROPOSED SUBSURFACE INFILTRATION SYSTEM-1 (PSIS-1) - CROSS SECTION
(NOT TO SCALE)



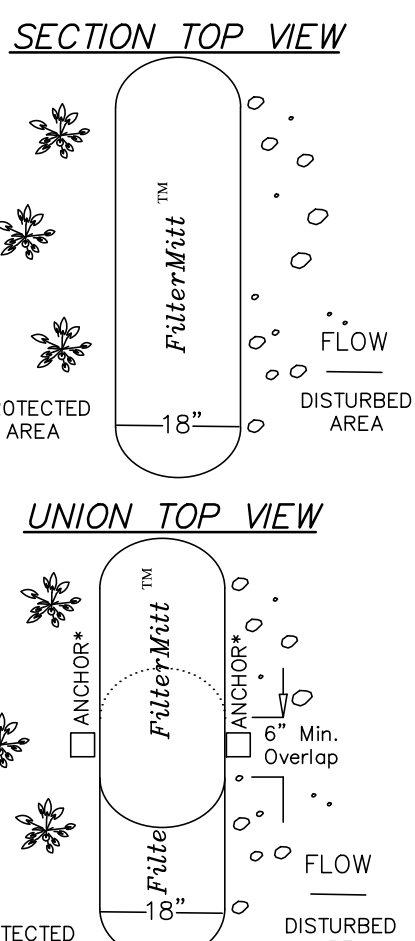
SPECIFICATIONS:
CONCRETE STRENGTH 4000 P.S.I. AT 28 DAYS
REINFORCING STEEL CONFORMS TO ASTM A185-79
MANHOLE DESIGN SPECIFICATIONS CONFORM TO ASTM C 487-84
ONE POUR MONOLITHIC BASE
ADJUST GRADE WITH COURSES OF BRICK
NOMINAL CONCRETE BLOCK SIZE: HEIGHT, 4" TO 8" WIDTH, 8" LENGTH, 8" TO 16"

DOUBLE CATCH BASIN
(NOT TO SCALE)

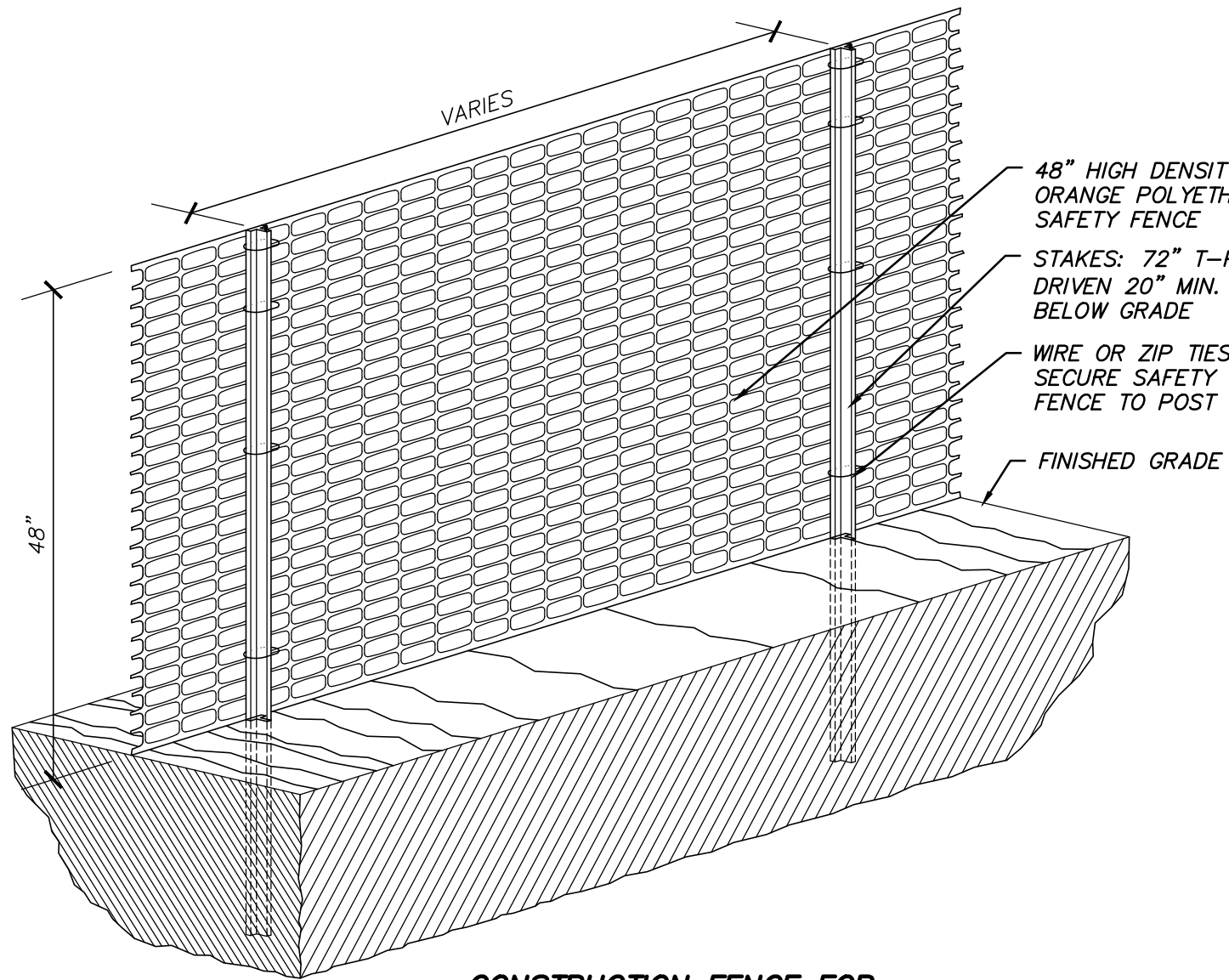


FilterMitt™ COMPONENTS:
OUTSIDE CASING: 100% ORGANIC HESSIAN
FILLER INGREDIENT: *FiberRoot Mulch™*
• A BLEND OF COARSE AND FINE COMPOST AND SHREDDED WOOD.
• PARTICLE SIZES: 100% PASSING A 3" SCREEN; 90-100% PASSING A 1" SCREEN; 70-100% PASSING A 0.75" SCREEN; 30-75% PASSING A 0.25" SCREEN.
• WEIGHT: APPROX. 850 LBS./CU.YD. (AVE. 30 LBS./L.F.)
For more information visit:
www.groundscapesexpress.com
or contact us at:
Groundscapes Express, Inc.
P.O. Box 737
Wrentham, MA 02093
(508) 384-7140

FILTERMITT DETAIL
(NOT TO SCALE)

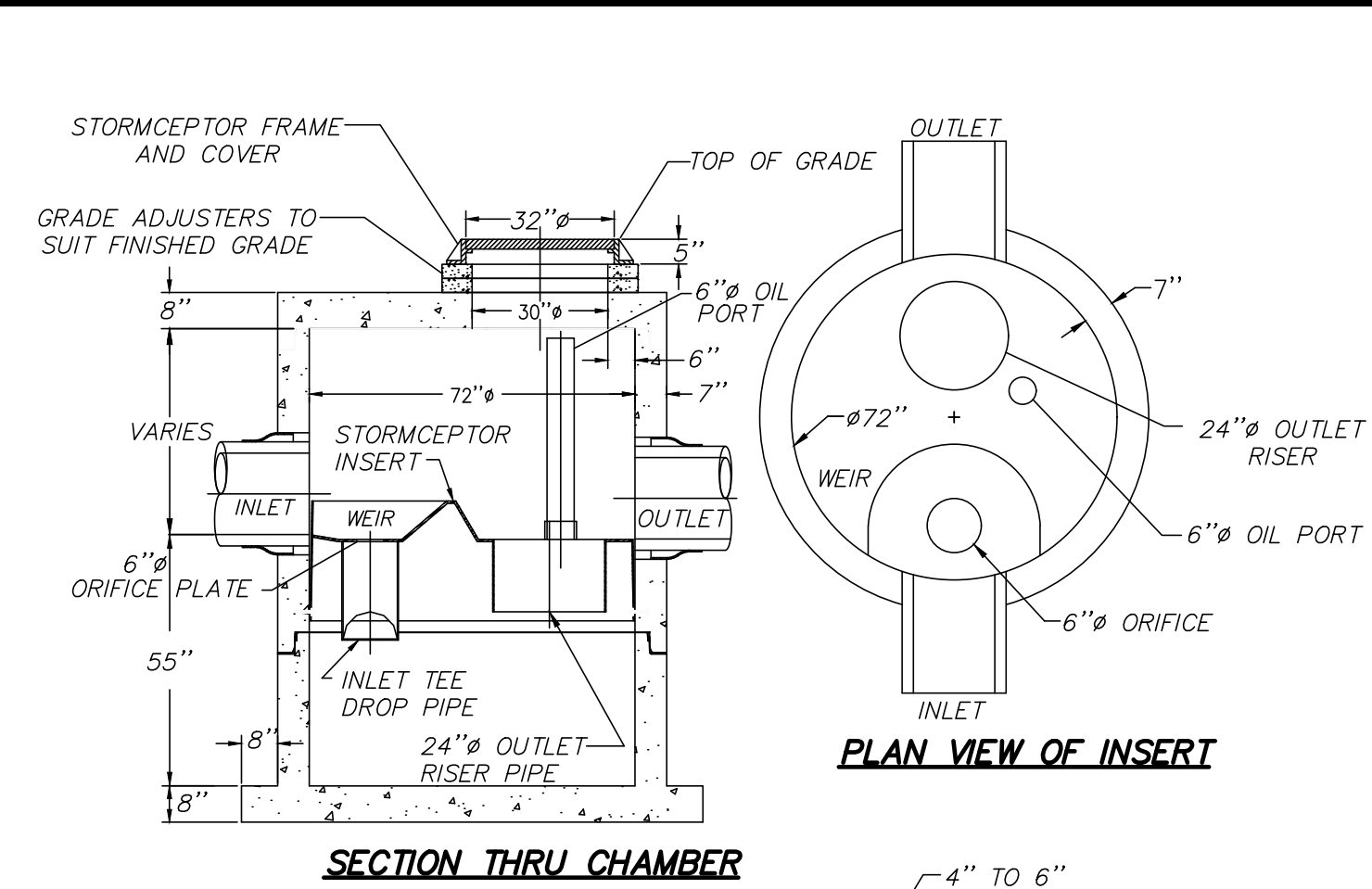


FilterMitt™ INSTALLATION:
WITH THE NEWEST TECHNOLOGY AND EQUIPMENT, SECTIONS CAN BE CONSTRUCTED ON SITE IN LENGTHS FROM 1' TO 100'.
SECTIONS CAN ALSO BE DELIVERED TO THE SITE IN LENGTHS FROM 1' TO 8'.
THE FLEXIBILITY OF *FilterMitt™* ALLOWS IT TO CONFORM TO ANY CONTOUR OR TERRAIN WHILE HOLDING A SLIGHTLY OVAL SHAPE AT 12" HIGH BY 18" WIDE.
WHERE SECTION ENDS MEET, THERE SHALL BE AN OVERLAP OF 6" OR GREATER. BOTH SIDES SHALL BE ANCHORED (OAK STAKES, TREES, ETC.) TO STABILIZE THE UNION.



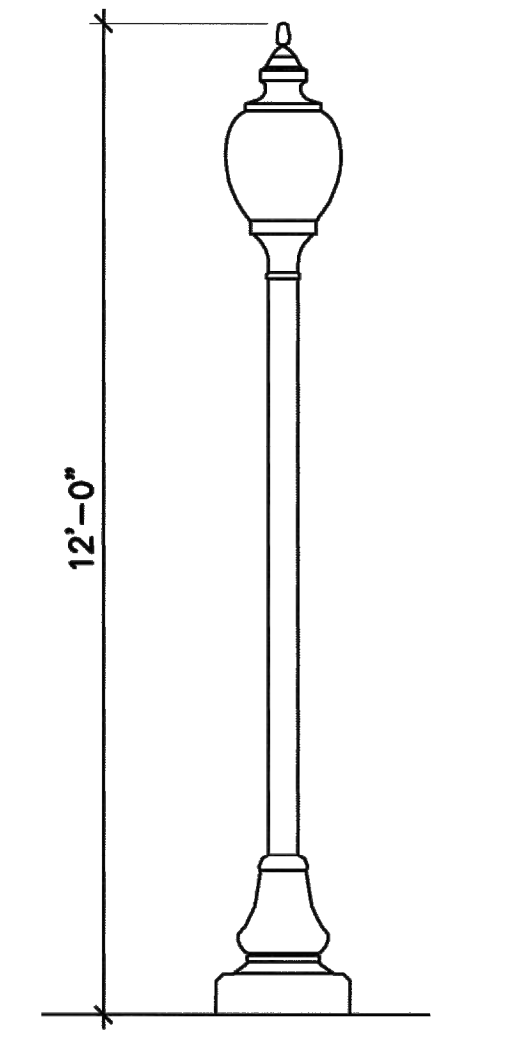
CONSTRUCTION FENCE FOR TREE PROTECTION DETAIL
(NOT TO SCALE)

NOTE:
1. EXISTING TREES TO BE SAVED SHALL BE PROTECTED WITH ORANGE CONSTRUCTION FENCE (OFF-SET FROM THE TREE TRUNK BY PROFESSIONAL STANDARD BASED ON CANOPY) AND BURLAP AND STRAP BOARD TRUNK WRAP METHOD.

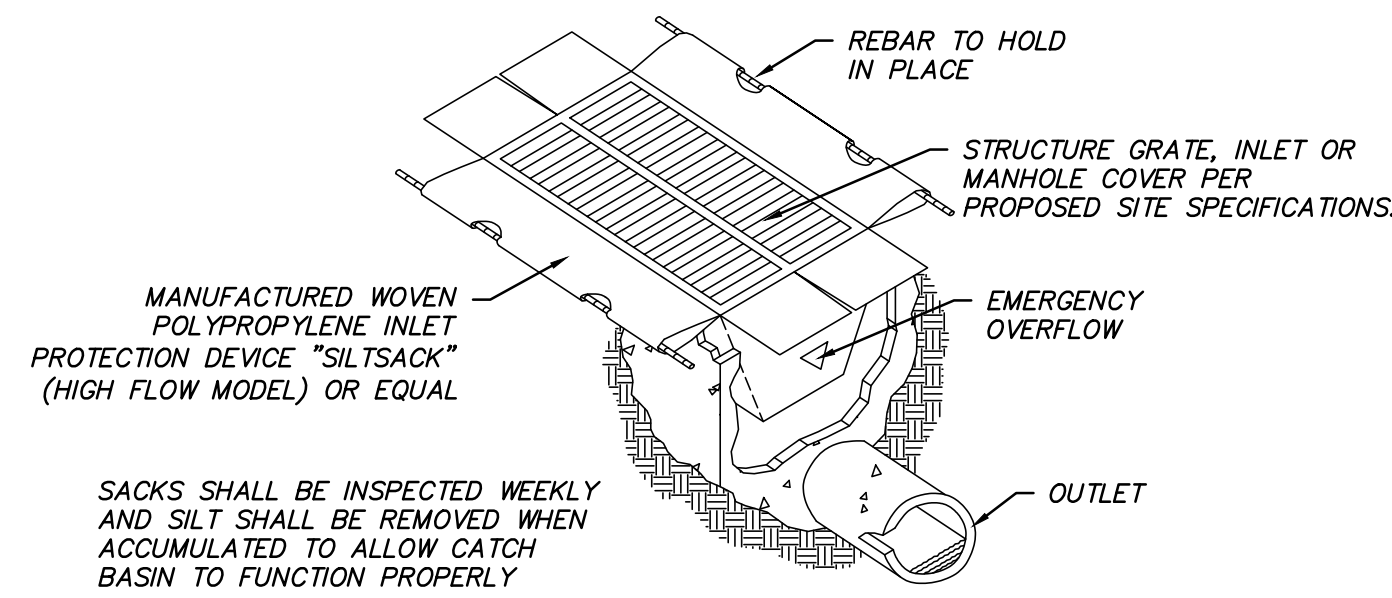


NOTE:
1. THE USE OF FLEXIBLE CONNECTIONS IS RECOMMENDED AT THE INLET AND OUTLET WHERE APPLICABLE.
2. THE COVER SHOULD BE POSITIONED OVER THE 24" Ø OUTLET RISER PIPE AND THE 6" Ø OIL PORT.
3. THE STORMCEPTOR SYSTEM IS PROTECTED BY ONE OR MORE OF THE FOLLOWING U.S. PATENTS: #4985148, #5498331, #5725760, #5753115, #5849181.

WATER QUALITY UNIT
STC 900 Precast Concrete Stormceptor
(900 US Gallon Capacity)
(NOT TO SCALE)



TYPICAL LIGHT POST DETAIL
(NOT TO SCALE)



SILTSACK DETAIL
(NOT TO SCALE)



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REGISTERED CIVIL ENGINEER, PE

DIRECTOR OF PUBLIC WORKS

DATE APPROVED

TOWN ENGINEER

DATE APPROVED

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DATE TOWN CLERK

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TOWN OF NEEDHAM PLANNING BOARD

BY:

APPROVED:

APPLICANT

MORITZ SCHMIDT
390 GROVE STREET
NEEDHAM, MASSACHUSETTS 02492

RECORD OWNERS

ELISABETH SCHMIDT-SCHUEBER
390 GROVE STREET
NEEDHAM, MASSACHUSETTS 02492

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SURVEY INFORMATION PROVIDED BY:
Field Resources, Inc.
LAND SURVEYORS
281 CHESTNUT ST.
NEEDHAM, MA 02459
P.O. BOX 324
AUBURN, MA 01501
508 832 4332
fieldresources@hotmail.com

390 GROVE STREET
SITE DETAILS 2
LOCATED IN
NEEDHAM, MASSACHUSETTS
(NORFOLK COUNTY)
PREPARED FOR
MORITZ SCHMIDT

MERIDIAN ASSOCIATES
60 MILK STREET, SUITE 208
BEVERLY, MASSACHUSETTS 01915
TELEPHONE: (978) 299-0447
WWW.MERIDIANASSOC.COM

DESIGNED BY: D. KELLEY
CHECKED BY: D. KELLEY
DATE: JULY 20, 2018
SCALE: 1"=40'
SHEET No. 10 OF 10
PROJECT No. 6036

From: [Lee Newman](#)
To: [Alexandra Clee](#)
Subject: FW: Comment regarding Bayview Road Improvement Project
Date: Tuesday, March 2, 2021 7:58:22 AM
Attachments: [BVLts.bmp](#)
[Trespass.bmp](#)

From: Ross Whistler <rwhistler25@hotmail.com>
Sent: Monday, March 1, 2021 3:26 PM
To: Lee Newman <LNewman@needhamma.gov>
Subject: Comment regarding Bayview Road Improvement Project

Bayview Road Improvement Project
865 Central Avenue, Needham, MA 02492

LIGHT TRESPASS

There is concern regarding potential light contamination from some of the proposed street lights. The electrical installation sheet ES1.02 (Figure 1) shows that street lights are to be installed immediately adjacent to the balconies at the ends of C, E, G, I, K and M wings of the Crescent Heights building at North Hill.

Figure 2 demonstrates the geometry of the situation and the potential for light trespass into apartments.

While it is true that the proposed Type 2 lens primarily illuminates an elliptical area on the ground, the surrounding area is not in darkness. There is substantial stray light, as has been demonstrated by a street light, also having a Type 2 lens, adjacent to Avery building. The stray light from this lens trespasses to an intolerable (per the resident) degree into her apartment.

The current Bayview Road lighting caused light trespass until appropriately masked, and it seems well to avoid repeating this situation if it can be helped.

There are two types of mask. There is a close-fitting mask that limits the light emission from each and every LED in the array in a given direction. The price has not been ascertained. Another type, known as a house side shield, fits externally and blocks light from the entire array in a given direction. This type would have to be custom designed and fabricated.

Recommendation: that the Needham Planning Board impose a Condition minimizing light trespass, perhaps using some of the following methods:

Relocate these lights away from the apartments

or

use a pole no longer than 11 feet so that the bottom of the installed light is at approximately the same height as the floor of the balcony

or

that suitable masking shields be attached to these lights to avoid illuminating apartment interiors.

The foregoing analysis is based on the best information available at this time. A consulting firm has failed to provide any information about the light support structure.

Prepared by: Ross Whistler

March 1 , 2021

865 Central Ave, Apt K405

781 444-2233

Bayview Road Improvement Project

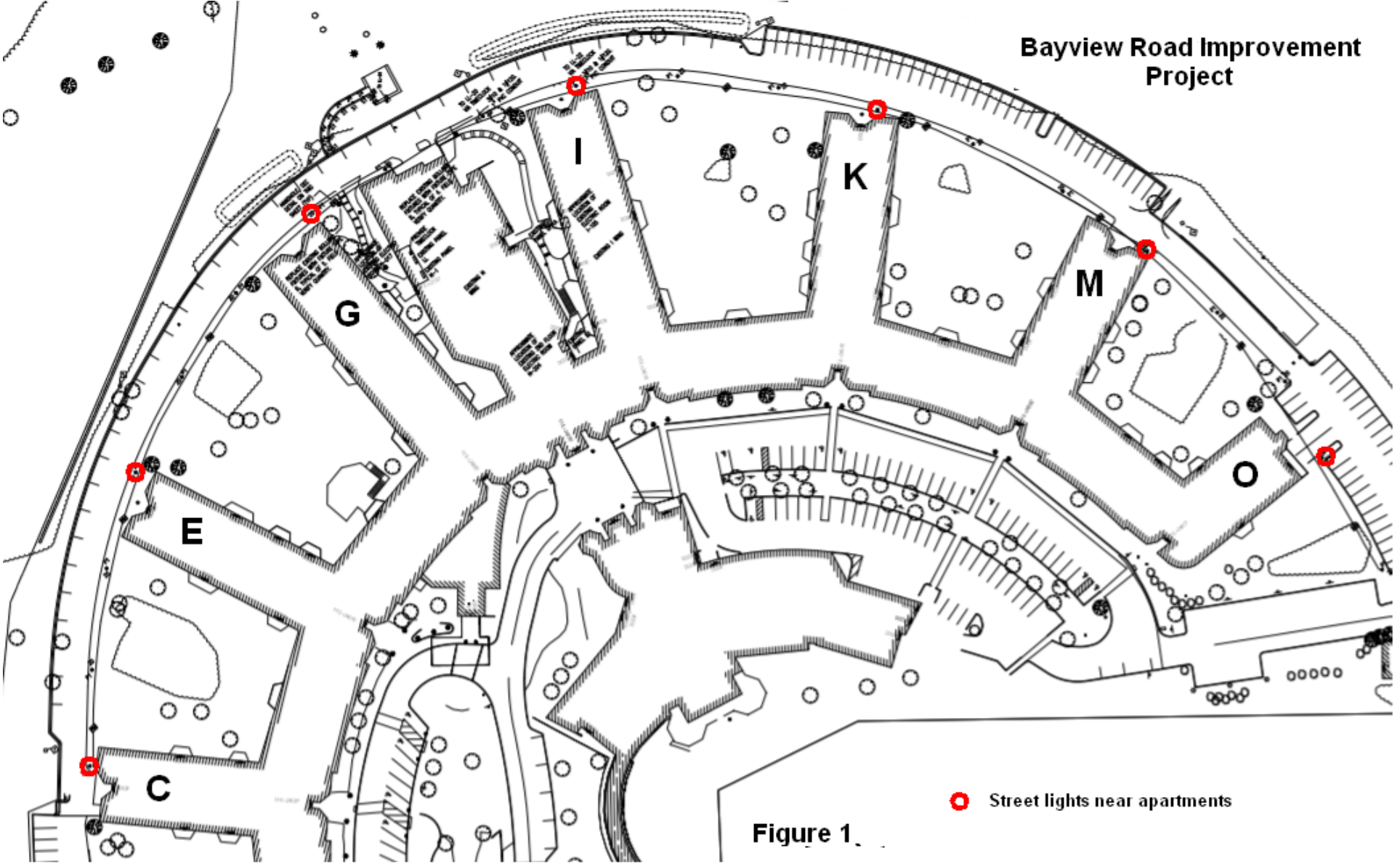


Figure 1.

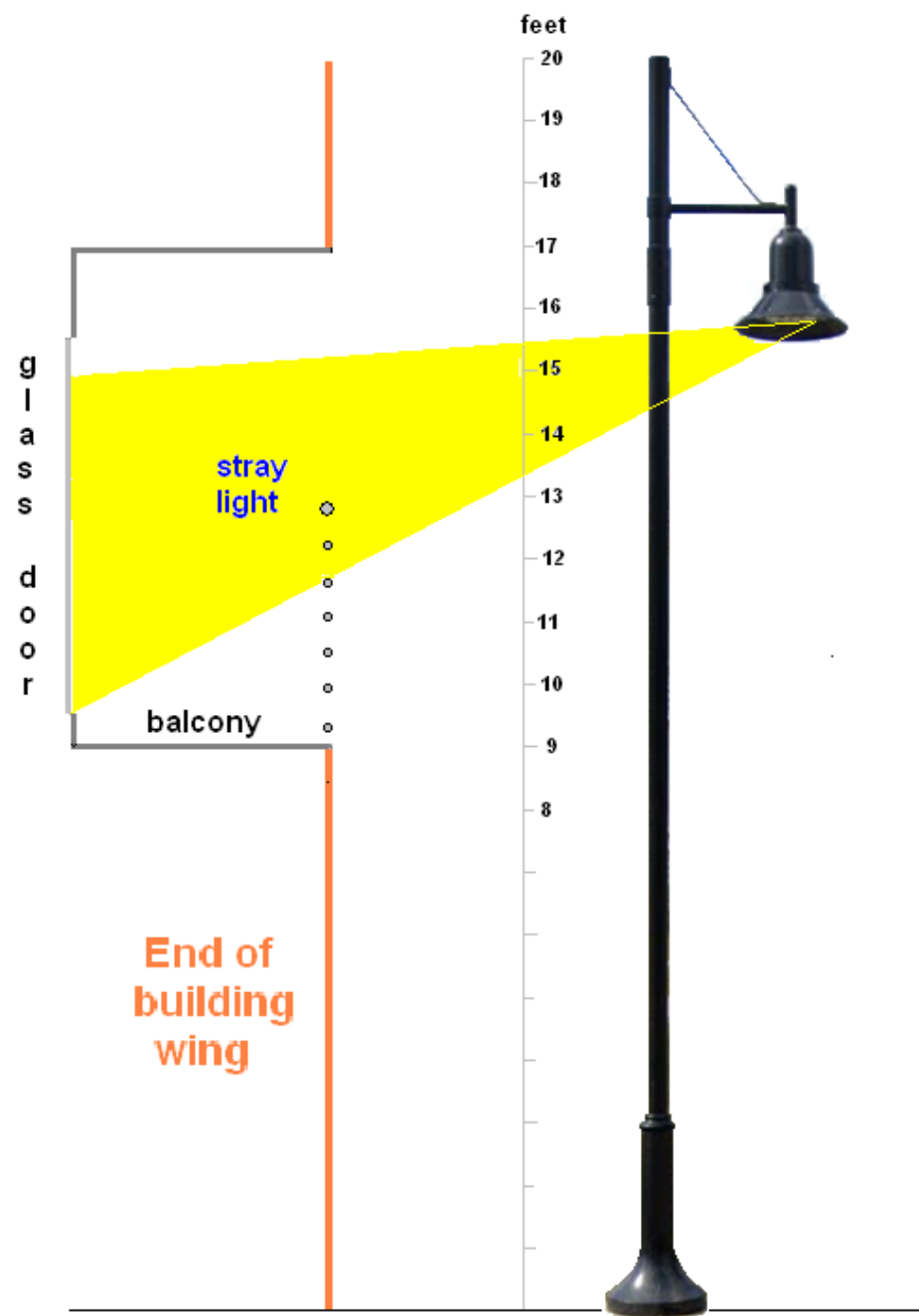


Figure 2

DECISION

SITE PLAN SPECIAL PERMIT AMENDMENT

Application No. 91-3

March 2, 2021

(Original Decision dated May 28, 1991 and amended on July 1, 1997, October 7, 1997, August 10, 1999, June 16, 2009, September 8, 2011, March 20, 2012, July 10, 2012, September 28, 2012 (insignificant modification), March 19, 2013, July 8, 2014, August 11, 2015, August 26, 2016 (insignificant modification))

NORTH HILL NEEDHAM INC.

(Formerly known as Living Care Villages of Needham, Inc.)

(Filed during the Municipal Relief Legislation, Chapter 53 of the Acts of 2020)

DECISION of the Planning Board (hereinafter referred to as the "Board") on the petition of North Hill Needham, Inc. 865 Central Avenue, Needham, Massachusetts, (hereinafter referred to as the "Petitioner"), for property located at 865 Central Avenue, Needham, Massachusetts. Said property is shown on Needham Town Assessor's Plan No. 309, as Parcel 25, and contains 59.54 acres.

This Decision is in response to an Application submitted to the Board on January 25, 2021, by the Petitioner for: (1) a Major Project Site Plan Special Permit Amendment under Section 7.4 of the Needham Zoning By-Law (hereinafter the "By-Law") and Section 4.2 of Site Plan Special Permit No. 91-3, dated September 8, 2011, as amended; and (2) a Special Permit under Sections 5.1.1.5 and 5.1.1.7 of the By-Law to waive strict adherence to the off-street parking requirements of Section 5.1.3 (Parking Plan Design Requirements) of the By-Law, more specifically, in Section 5.1.3(f), to waive the parking space size requirement of six existing parking spaces, and in Section 5.1.3(n), to waive the requirement to install bicycle racks.

The requested Major Project Site Plan Special Permit, would, if granted, permit the Petitioner to make modifications to the Plans approved in connection with Major Project Site Plan Special Permit Amendment No. 91-3, dated May 28, 1991 as amended by Amendments dated July 1, 1997, October 7, 1997, August 10, 1999, June 16, 2009, September 8, 2011, March 20, 2012, July 10, 2012, September 28, 2012, March 19, 2013, July 8, 2014, August 11, 2015 and August 26, 2016, respectively. The proposed modifications would allow the Petitioner to construct 75 new parking spaces along a portion of the existing fire lane, widen the fire lane, and undertake associated sitework and landscaping.

The Petitioner has further noted in its application that the existing cooling tower shown on the plans for purposes of illustration needs replacement and that the proposed location of the cooling tower (also shown on the plans) is slightly different from the current location. The replacement of the existing cooling tower is part of a continuous process of maintenance, repair, and replacement of elements of a large facility such as North Hill, and Petitioner requests that the Board make a determination that said cooling tower replacement is not part of the site plan review process and will be permitted and overseen, as required, by the Building Department.

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted and mailed to the Petitioner, abutters and other parties in interest as required by law, the

hearing was called to order by the Chairperson, Jeanne S. McKnight on Tuesday, February 16, 2021 at 7:30 p.m. via remote meeting using Zoom ID [826-5899-3198](https://us02zoom.us/j/82658993198). Board members Jeanne S. McKnight, Paul S. Alpert, Martin Jacobs and Adam Block were present at the February 16, 2021 hearing. The record of the proceedings and the submission upon which this decision is based may be referred to in the office of the Town Clerk or the office of the Board.

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

- Exhibit 1 Application Form for Site Plan Review completed by the applicant's representative dated January 25, 2021, with Exhibit A and application signed by property owner dated February 4, 2021, including "Clerk's Certificate".
- Exhibit 2 Letter to the Needham Planning Board, from Attorney Evans Huber, dated January 14, 2021.
- Exhibit 3 Memorandum from Dan Keches and Justin Mosca, Vanasse Hangen Brustlin, Inc., 101 Walnut Street, PO Box 9151, Watertown MA, 02472, dated January 4, 2021, regarding Plan Changes.
- Exhibit 4 Memorandum from Dan Keches and Justin Mosca, Vanasse Hangen Brustlin, Inc., 101 Walnut Street, PO Box 9151, Watertown MA, 02472, dated January 4, 2021, regarding stormwater revisions, with attachments.
- Exhibit 5 Plans entitled "North Hill Life Care Facility, 865 Central Avenue, Needham, Massachusetts 02492" prepared by Vanasse Hangen Brustlin, Inc., 101 Walnut Street, P.O. Box, 9151, Watertown, MA, 02471, Hammer + Walsh design Inc., 24 Famesworth Street, 4th Floor, Boston, MA, 02210, consisting of 19 sheets: Sheet 1, Title Sheet, dated June 17, 2011, revised July 28, 2011, December 3, 2012, April 1, 2013, May 28, 2014, July 8, 2014, July 30, 2015, August 9, 2016 and January 4, 2021; Sheet 2, Sheet C2, entitled "Key Plan," dated June 17, 2011, revised July 28, 2011, December 3, 2012, May 28, 2014, July 14, 2016 and January 4, 2021; Sheet 3, Sheet C3, entitled "Overall Site Master Plan," dated June 17, 2011, revised July 28, 2011, December 3, 2012, May 28, 2014, July 14, 2016 and January 4, 2021; Sheet 4, Sheet C3.1, entitled "Phasing Site Plan," dated June 17, 2011, revised July 28, 2011, December 3, 2012, May 28, 2014, July 8, 2014, July 14, 2016 and January 4, 2021; Sheet 5, Sheet C4.1.2, entitled "Bayview Road, Layout and Materials Plan," dated January 4, 2021; Sheet 6, Sheet C4.2.2, entitled "Bayview Road, Layout and Materials Plan," dated January 4, 2021; Sheet 7, Sheet C4.3.2, entitled "Bayview Road, Layout and Materials Plan," dated January 4, 2021; Sheet 8, Sheet C5.1.2, entitled "Bayview Road, Grading and Drainage Plan," dated January 4, 2021; Sheet 9, Sheet C5.2.2, entitled "Bayview Road, Grading and Drainage Plan," dated January 4, 2021; Sheet 10, Sheet C5.3.2, entitled "Bayview Road, Grading and Drainage Plan," dated January 4, 2021; Sheet 11, Sheet C6.1.2, entitled "Bayview Road, Utilities Plan," dated January 4, 2021; Sheet 12, C6.2.2, entitled "Bayview Road, Utilities Plan," dated January 4, 2021; Sheet 13, C6.3.2, entitled "Bayview Road, Utilities Plan," dated January 4, 2021; Sheet 14, Sheet C7, entitled "Emergency Vehicle Access Plan," dated June 17, 2011, revised July 28, 2011, December 3, 2012, May 28, 2014 and January 4, 2021; Sheet 15, Sheet C8.5, entitled "Bayview Road, Site Details," dated January 4, 2021; Sheet 16, Sheet L3.7, entitled "Bayview Road, Stairway and Path Improvements," dated January 4, 2021; Sheet 17, Sheet L3.8, entitled "Bayview Road, Bioretention Basin Planting Plans," dated January 4, 2021; Sheet 18, Sheet PH1.02, entitled "Bayview Road, Lighting Photometric Plan," dated January 4, 2021; Sheet 19, Sheet ES1.02, entitled "Bayview Road, Site Distribution Plan," dated January 4, 2021.

Exhibit 6 Design Review Board Approval on January 11, 2021.

Exhibit 7 Interdepartmental Communication ("IDC") to the Board from Dennis Condon, Chief of the Needham Fire Department, dated January 20, 2021; IDC to the Board from Tara Gurge, Assistant Director of Public Health, the Needham Health Department dated January 21, 2021 and February 16, 2021; IDC to the Board from Tom Ryder, Assistant Town Engineer, the Needham Department of Public Works dated February 10, 2021.

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

Submitted for the Board's deliberation after to the close of the public hearing (content stated verbally at hearing) was the following exhibit:

Exhibit 8 Letter to the Needham Planning Board, from Attorney Evans Huber, dated February 17, 2021.

FINDINGS AND CONCLUSIONS

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

- 1.1 The subject property is located in an A-2 and SRA Zoning District. The residential component of North Hill is a use permitted as of right. The Health Center, as a nursing home, is a use permitted by Special Permit originally issued by the Board of Appeals on June 12, 1979, and modified March 9, 1982, and April 18, 1984. The property was also the subject of a Special Permit Amendment issued by the Planning Board on May 28, 1991, and further amended on July 1, 1997, October 7, 1997, August 10, 1999, June 16, 2009, September 8, 2011, March 20, 2012, July 10, 2012, September 28, 2012 (insignificant modification), March 19, 2013, July 8, 2014, August 11, 2015, and August 26, 2016 (insignificant modification). The Planning Board's jurisdiction arises from the Site Plan Review provisions of Section 7.4 of the By-Law. The existing Special Permit, as amended, provided for an aggregate of 512 parking spaces serving the entire existing development on the property.
- 1.2 The property is shown on Needham Town Assessor's Plan 309, parcel 25, and contains 59.54 acres. The property is owned by Babson College and is leased to the Petitioner.
- 1.3 As indicated on the Zoning Table shown on the Plan, the proposed Project conforms to the zoning requirements as to height, lot coverage and front, side and rear setbacks and all other applicable dimensional requirements of the By-Law.
- 1.4 The Petitioner has expanded and modernized its facility over the past several years, much of it pursuant to the Planning Board special permit/site plan review process. There presently exists a 12-foot wide fire lane that parallels the rear of the main building. During the construction process associated modernization, a number of residents and staff parked adjacent to the fire lane. In many instances those parking spaces were closer to residents' units or staff offices than the parking areas that were formerly utilized, so several residents and staff continued to park adjacent to the fire lane following construction. For the benefit that proximity of spaces brings, particularly to many senior citizens who have some difficulty walking longer distances (much of it outside), the Petitioner now seeks to make the parking arrangement at the fire lane permanent.

- 1.5 The proposed modifications would allow the Petitioner to construct 75 new parking spaces along a portion of the existing fire lane, widen the fire lane, and undertake associated sitework and landscaping.
- 1.6 The total number of parking spaces after completion of the project will increase from 512 to 587. The existing Special Permit, as amended, provided for an aggregate of 512 parking spaces at the conclusion of the project serving the entire existing development on the property. The project, as proposed by this application for an amendment, will increase the total number of parking spaces at the conclusion of the project to 587 parking spaces.
- 1.7 The project comprises replacement of most of the existing access drive in the area of work with a 20-foot wide paved driveway conforming to access requirements for fire lanes, and the addition of paved parallel parking to the outer perimeter. For the remaining portion of the drive at the east end, the driveway width is proposed to be increased to 24 feet to accommodate “head in” parking where adjacent topography allows. Curbing is proposed to be provided along the outer edge of the new pavement to route stormwater from the reconstructed drive into the onsite stormwater management system and prevent runoff down the adjacent slopes. Stormwater will flow overland to one of two proposed lined, filtering bioretention basins located on the outside of the new driveway near “G” and “I” Wings of the Independent Living Building. Outlets from these basins will connect back to the existing closed-drainage system within Bayview Road, ultimately routing this stormwater to the existing stormwater infiltration/detention basin at East Militia Heights Drive. Stormwater runoff from the paved area of the fire lane that previously flowed untreated toward Central Avenue will now be collected in an onsite stormwater management system designed to provide greater than the requisite water quality using bioretention basins providing removal of suspended solids, phosphorus, and pathogens.
- 1.8 The Needham Conservation Commission issued an Order of Conditions on August 18, 2011, with respect to the portions of the Project within its jurisdiction and issued an amendment to said Order of Conditions on June 20, 2012.
- 1.9 None of the proposed work is within the Conservation Restriction on site, as shown on the plans.
- 1.10 The Petitioner has requested a Special Permit pursuant to Section 5.1.1.5 and 5.1.1.7 of the Zoning By-Law, to waive strict adherence to the off-street parking requirements of Section 5.1.3 (Required Parking) of the By-Law. The project complies with all the design criteria set forth in Section 5.1.3 except that the Petitioner is seeking a waiver from Section 5.1.3(n) and Section 5.1.3(f). The Petitioner is seeking a waiver from the Section 5.1.3(n) bicycle rack requirement and requests that, due in part to the topography and location of the property, and the population that it serves. The Petitioner notes that parking waivers have already been granted with respect to the necessity of providing bicycle racks, but the Petitioner requests the relief again if the Board determines that the provisions of Section 5.1.1.7 are applicable.
- 1.11 In addition, a waiver is requested from the requirements of Section 5.1.3(f) (Parking Space Size) with respect to the six existing spaces located along the southeasterly corner of the existing Farley building. The spaces are non-compliant in that they are of varying lengths (between 14-16 feet). A parking waiver has already been granted with respect to these parking spaces, but the Petitioner requests this relief again, if the Board determines that the provisions of Section 5.1.1.7 are applicable.
- 1.12 The Petitioner notes that the existing cooling tower shown on the plans for purposes of illustration is in need of replacement and the proposed location of the cooling tower (also

shown on the plans) is slightly different from the current location. The Petitioner has proposed to replace the existing cooling tower and pad with a new cooling tower and pad having dimensions as follows:

Existing Cooling Tower

Width 5'-5/8"

Length 12-2 7/8"

Height: 9'-3 h"

New Cooling Tower

Width 4"-1 3/4"

Length 9'-5 3/8"

Height 9'-11"

Tower Pad

Width 16'

Length 18'

Tower Pad

Width 19'

Length 22'

The replacement of the existing cooling tower is part of a continuous process of maintenance, repair, and replacement of elements of a large facility such as North Hill, and the Petitioner requests that the Board make a determination that said cooling tower replacement is not part of the site plan review process and will be permitted and overseen, as required, by the Building Department. The Planning Board determined that the cooling tower is subject to site plan review and has approved the proposed new location as shown on the plan in Exhibit 5 and as described above and in Exhibit 8 subject to the terms of this permit.

- 1.13 There is proposed to be a guardrail on the side of the driveway that slopes downward towards the conservation restriction to restrict snow from being pushed in that direction. Snow is proposed to be hauled to the inside of the bays in between the wings of the building. From there it will melt and flow towards the street's stormwater system.
- 1.14 Adjoining premises will be protected against seriously detrimental uses on the site by provision of surface water drainage, sound and sight buffers and preservation of views, light and air. The proposal is creating better stormwater management on the portion of the site affected. Sound and site buffers will not be affected, as the driveway already exists. The improvements proposed by this application have been designed to be consistent with the existing structures and other improvements.
- 1.15 Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, and the location of driveway openings in relation to traffic or to adjacent streets has been assured. Traffic flow will continue in the one-way direction on the driveway but will now provide the required fire lane width for added safety.
- 1.16 Adequacy of the arrangement of parking and loading spaces in relation to the proposed uses of the premises has been achieved. The total number of parking spaces after the conclusion of the Project will increase from 512 to 587. All new parking spaces will meet existing parking criteria and the only spaces that are non-compliant are the six parking spaces along the southeast corner of the Farley Building, for which waivers have been granted.
- 1.17 Adequate methods of disposal of refuse and other waste resulting from the uses permitted on the site have been assured. The methods of disposal of refuse and other wastes remain consistent with existing conditions. Solid waste and refuse will be disposed of in compliance with all applicable rules and regulations. The waste water system is connected to the municipal sewer system and will continue to do so. Disposal of refuse will continue to be handled at the existing loading bay door on the south side of the existing Farley Building and at the trash compactor located at the Skilled Nursing Facility loading dock.

- 1.18 Relationship of structures and open spaces to the natural landscape, existing buildings and other community assets in the area and compliance with other requirements of the By-Law has been met. No additional structures are being added as a result of the current proposal. The cooling tower is being relocated to a location very near its prior location to accommodate the widening of the driveway. The community garden, a natural area and asset for North Hill residents, will remain.
- 1.19 Mitigation of adverse impact on the Town's resources, including the effect on the Town's water supply and distribution system, sewer collection and treatment, fire protection and streets has been assured. The changes proposed by this application will have no additional impact on the Town's resources. The work proposed by the present application represents minor modifications and refinements to the total project.
- 1.20 No change in the total number of beds and/or units is contemplated by the current proposal.
- 1.21 The Petitioner met with the Design Review Board on January 11, 2021 and obtained approval for the project.
- 1.22 Under Section 7.4 of the By-Law, a Major Project Site Plan Review Special Permit may be granted in the Apartment-2 Zoning District and in the Single Residence A Zoning District, if the Board finds that the proposed development complies with the standards and criteria set forth in the provisions of the By-Law. On the basis of the above findings and conclusions, the Board finds that the proposed development plan, as conditioned and limited herein for the Site Plan Review, to be in harmony with the purposes and intent of the By-Law, to comply with all applicable By-Law requirements, to have minimal adverse impact, and to be harmonious with the surrounding area.
- 1.23 Under Section 5.1.1.5 of the By-Law, a special permit to waive certain parking plan and design requirements as set forth in Section 5.1.3, more specifically, in Section 5.1.3(n), to waive the requirement for bicycle racks, if the particular use, structure or lot does not warrant the application of certain design requirements, and that the elimination of the bicycle rack requirement is warranted. On the basis of the above findings and conclusions, the Board finds that there are special and unique circumstances justifying the elimination of the bicycle rack requirement, as conditioned and limited herein, which will also be consistent with the intent of the By-Law and which will not increase the detriment to the Town's and neighborhood's inherent use. Under Section 5.1.1.5 of the By-Law, a special permit to waive certain parking plan and design requirements as set forth in Section 5.1.3, more specifically, in Section 5.1.3(f), to waive the minimum length of parking space, may be granted, if the Board finds that, owing to special and unique circumstances, the particular use, structure or lot does not warrant the application of certain design requirements. Given that the six existing spaces located along the southeasterly corner of the existing Farley Building are non-compliant spaces in that they are of varying lengths, between 14 and 16 feet, and that said parking spaces are located at the end of the maneuvering aisle, the Board finds that there are special and unique circumstances justifying that continuation of the non-compliant length of the six (6) spaces described herein, which will also be consistent with the intent of the By-Law and which will not increase the detriment to the Town's and neighborhood's inherent use.

THEREFORE, the Board voted 4-0 to grant (1) the requested Major Project Site Plan Special Permit Amendment under Section 7.4 of the Needham Zoning By-Law and Section 4.2 of Site Plan Special Permit No. 91-3, dated September 8, 2011, as amended; and (2) the requested Special Permit under Sections 5.1.1.5 and 5.1.1.7 of the Zoning By-Law to waive strict adherence to the off-street parking

requirements of Section 5.1.3 (Parking Plan Design Requirements) of the By-Law, more specifically, in Section 5.1.3(f), to waive the parking space size requirement of six existing parking spaces, and in Section 5.1.3(n), to waive the requirement to install bicycle racks; subject to the following plan modifications, conditions and limitations.

PLAN MODIFICATIONS

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

- 2.0 No Plan Modifications required.

CONDITIONS

- 3.0 The following conditions of this approval shall be strictly adhered to. Failure to adhere to these conditions or to comply with all applicable laws and permit conditions shall give the Board the rights and remedies set forth in Section 3.23 hereof.
- 3.1 The Special Permit issued to Babson College by the Board of Appeals on June 12, 1979 and filed with the Town Clerk on August 2, 1979, the Special Permit amendment issued to Babson College by the Board of Appeals on March 9, 1982, and filed with the Town Clerk on March 15, 1982, the Special Permit amendment issued to Living Care Villages of Massachusetts, Inc. by the Board of Appeals on April 18, 1984, and filed with the Town Clerk on May 4, 1984, the Special Permit amendment issued by the Planning Board on May 28, 1991, and filed with the Town Clerk on June 6, 1991, the Special Permit amendment issued by the Planning Board on July 1, 1997, and filed with the Town Clerk on July 1, 1997, the Special Permit amendment issued by the Planning Board on October 7, 1997, and filed with the Town Clerk on October 10, 1997, the Special Permit amendment issued by the Planning Board on August 10, 1999, and filed with the Town Clerk on August 13, 1999, the Special Permit amendment issued by the Planning Board on June 16, 2009, and filed with the Town Clerk on June 17, 2009, the Special Permit amendment issued by the Planning Board on September 8, 2011, and filed with the Town Clerk on September 12, 2011, the Special Permit amendment issued by the Planning Board on March 20, 2012, and filed with the Town Clerk on March 20, 2012, the Special Permit amendment issued by the Planning Board on July 10, 2012, and filed with the Town Clerk on August 1, 2012, the Special Permit amendment issued by the Planning Director on September 28, 2012, the Special Permit amendment issued by the Planning Board on March 19, 2013, and filed with the Town Clerk on March 21, 2013, the Special Permit amendment issued by the Planning Board on July 8, 2014, and filed with the Town Clerk on July 11, 2014, the Special Permit amendment issued by the Planning Board on August 11, 2015, and filed with the Town Clerk on August 13, 2015, and the Special Permit amendment issued by the Planning Director on August 26, 2016, are incorporated by reference and all other conditions therein imposed remain in full force and effect, except that modifications as shown on the “Plan” are hereby approved and incorporated by reference as conditioned by this Decision.

- 3.2 The work authorized by this Decision is the following:
- (a) Widening the existing fire lane to 20 feet and 24 feet for a small portion;
 - (b) Creation of 75 new parking spaces adjacent to the widened fire lane;
 - (c) Associated sitework, such as adding handrails to the existing walkway adjacent to Building G, and reconstructing a portion of the existing walkway adjacent to Building I;
 - (d) Landscaping; and
 - (e) Relocation and replacement of the cooling tower;

All as shown on the plans in Exhibit 5 and as detailed in Section 1.12 and Exhibit 8.

- 3.3 The buildings, support services, parking areas, driveways, walkways, landscape areas, and other site and off-site features shall be constructed in accordance with the Plan. Any changes, revisions or modifications to the Plan shall require approval by the Board.
- 3.4 All buildings and land constituting the premises shall remain under a single leasehold ownership interest.
- 3.5 Sufficient parking shall be provided on the locus at all times in accordance with the Plan and there shall be no parking of motor vehicles off the locus at any time, except for construction and other vehicles as may be parked on property owned by others with the assent of the property owner, including the Town of Needham.
- 3.6 A minimum of 587 parking spaces shall be provided on the site at all times at completion of this phase of the project. All off-street parking shall comply with the requirements of Section 5.1.3 of the By-Law, except as otherwise waived by this Decision.
- 3.7 All required handicapped parking spaces shall be provided including above-grade signs at each space that include the international symbol of accessibility on a blue background with the words "Handicapped Parking Special Plate Required Unauthorized Vehicles May be Removed at Owner's Expense". The quantity and design of spaces, as well as the required signage shall comply with the M.S.B.C. 521 CMR Architectural Access Board Regulation and the Town of Needham General By-Laws.
- 3.8 The Petitioner shall submit to the Building Inspector the plans and specifications for the cooling tower. The cooling tower shall be designed in accordance with the specification detailed in Section 1.12 and Exhibit 8 of this Decision. The cooling tower shall be designed, operated and screened to comply with all applicable Federal, state and local regulations, including those addressing sound attenuation to protect the adjoining properties and nearest inhabited residence.
- 3.9 All new utilities, including telephone and electrical service, shall be installed underground from the street line.
- 3.10 The maintenance of site and parking lot landscaping shall be the responsibility of the Petitioner and the site and parking lot landscaping shall be maintained in good condition.
- 3.11 A signed and stamped Storm Water Management Policy form has been submitted to the Town of Needham, together with a construction mitigation and an operation and maintenance plan as described in the policy. A copy of the inspection reports for the Operations and Maintenance Program of the Stormwater Management Report shall be provided to the Planning Board on an annual basis.

- 3.12 All solid waste shall be removed from the site by a private contractor. Snow shall also be removed or plowed by private contractor or Petitioner's staff. All snow shall be removed or plowed such that the total number and size of parking spaces are not reduced and shall be moved away from the steep slope towards the conservation restriction.
- 3.13 Lighting proposed to be installed by the cooling tower on site shall not cause a public health nuisance, with lighting being allowed to migrate on to other abutting properties. If complaints are received, this lighting shall be adjusted if warranted pursuant to Board of Health standards so it will not cause a public health nuisance.
- 3.14 In constructing and operating the proposed buildings on the locus pursuant to this Special Permit, due diligence shall be exercised, and reasonable efforts shall always be made to avoid damage to the surrounding areas or adverse impact on the environment.
- 3.15 Excavation material and debris, other than rock used for walls and ornamental purposes and fill suitable for placement elsewhere on the site, shall be removed from the site.
- 3.16 All construction staging shall be on-site. No construction parking shall be on public streets. Construction parking shall be all on site or a combination of on-site and off-site parking at locations in which the Petitioner can make suitable arrangements. If required by the Building Inspector, construction staging plans shall be included in the final construction documents prior to the filing of a Building Permit and shall be subject to the review and approval of the Building Inspector.
- 3.17 The following interim safeguards shall be implemented during construction:
- (a) The hours of construction shall be 7:00 a.m. to 5:00 p.m. Monday through Saturday.
 - (b) The Petitioner's contractor shall provide temporary security chain-link or similar type fencing around the portions of the Project site, which require excavation or otherwise pose a danger to public safety.
 - (c) The Petitioner's contractor shall designate a person who shall be responsible for the construction process. That person shall be identified to the Police Department, the Department of Public Works, the Building Inspector and the abutters and shall be contacted if problems arise during the construction process. The designee shall also be responsible for assuring that truck traffic and the delivery of construction material does not interfere with or endanger traffic flow on Central Avenue, East Militia Heights Road and Forest Street.
 - (d) The Petitioner shall take appropriate steps to minimize, to the maximum extent feasible, dust generated by the construction including, but not limited to, requiring subcontractors to place covers over open trucks transporting construction debris and keeping Central Avenue, East Militia Heights Road and Forest Street clean of dirt and debris and watering appropriate portions of the construction site from time to time as may be required.
- 3.18 No portion of the newly paved driveway, including the 75 new parking spaces, nor the new cooling tower shall be constructed until:
- (a) The final plans shall be in conformity with those approved by the Board, and a statement certifying such approval shall have been filed by this Board with the Building Inspector.

- (b) The Petitioner shall have met the conditions of Section 3.8 of this decision as relates the cooling tower.
 - (c) The Petitioner shall have recorded with the Norfolk County Registry of Deeds a certified copy of this Decision granting this Special Permit Amendment and Site Plan Approval with the appropriate reference to the book and page number of the recording of the Petitioner's title deed or notice endorsed thereon.
- 3.19 The Board acknowledges that the first portion of the work for this project involves the construction of a new concrete pad and the installation of the new cooling tower (including associated site work). The second component of the project is the removal of the existing cooling tower and the existing concrete pad. The third component of the project is the widening of the fire lane and the construction of the 75 new parking spaces (and associated site work). No portion of the 75 new parking spaces shall be utilized for parking until the following conditions are met:
- (a) An as-built plan, supplied by the engineer of record certifying that the on-site project improvements associated with the work authorized by this Decision is requested were built according to the approved documents, has been submitted to the Board and Department of Public Works. The as-built plan shall show the cooling tower, all finished grades and final construction details of the driveways, parking areas, drainage systems, utility installations, and sidewalk and curbing improvements on-site, in their true relationship to the lot lines. In addition to the engineer of record, said plan shall be certified by a Massachusetts Registered Land Surveyor.
 - (b) There shall be filed with the Building Inspector and Board a statement by the Department of Public Works certifying that the finished grades and final construction details of the driveways, parking areas, drainage systems, utility installations, and sidewalks and curbing improvements on-site associated with the work authorized by this Decision is requested, have been constructed to the standards of the Town of Needham Department of Public Works and in accordance with the approved Plan.
 - (c) There shall be filed with the Building Inspector a Certificate of Compliance signed by a registered engineer upon completion of construction of the cooling tower.
 - (d) There shall be filed with Building Inspector a supplemental letter from Petitioner's acoustical engineer confirming that the cooling tower has been installed such that its operation at any time of the day or night shall not exceed the applicable Commonwealth of Massachusetts and Town of Needham noise regulations.
- 3.20 The proposed driveway, parking spaces and cooling tower shall contain the dimensions and shall be located on that portion of the locus as shown on the Plan, as modified by this Decision, and in accordance with the applicable dimensional requirements of the By-Law.
- 3.21 The Petitioner, by accepting this permit Decision, warrants that the Petitioner has included all relevant documentation, reports, and information available to the Petitioner in the application submitted, that this information is true and valid to the best of the Petitioner's knowledge.
- 3.22 In addition to the provisions of this approval, the Petitioner must comply with all requirements of all state, federal, and local boards, commissions or other agencies, including, but not limited to, the Board of Selectmen, Building Inspector, Fire Department, Department of Public Works, Conservation Commission, Police Department, and Board of Health.

- 3.23 Violation of any of the conditions of this decision shall be grounds for revocation of any building permit granted hereunder as follows: In the case of violation of any conditions of this decision, the Town will notify the Petitioner of such violation and give the Petitioner reasonable time, not to exceed thirty (30) days, to cure the violation. If, at the end of said thirty (30) day period, the Petitioner has not cured the violation, or in the case of violations requiring more than thirty (30) days to cure, has not commenced the cure and prosecuted the cure continuously, the permit granting authority may, after notice to the Petitioner, conduct a hearing in order to determine whether the failure to abide by the conditions contained herein should result in a recommendation to the Building Inspector to revoke any building permit or certificate of occupancy granted hereunder. This provision is not intended to limit or curtail the Town's other remedies to enforce compliance with the conditions of this decision including, without limitation, by an action for injunctive relief before any court of competent jurisdiction. The Petitioner agrees to reimburse the Town for its reasonable costs in connection with the enforcement of the conditions of this decision if the Town prevails in such enforcement action.

LIMITATIONS

- 4.0 The authority granted to the Petitioner by this permit is limited as follows:
- 4.1 This permit applies only to the site and off-site improvements, which are the subject of this petition. All construction to be conducted on-site and off-site shall be conducted in accordance with the terms of this permit and shall be limited to the improvements on the Plan, as modified by this Decision.
- 4.2 There shall be no further development of this site without further site plan approval as required under Section 7.4 of the By-Law. The Board, in accordance with M.G.L., Ch. 40A, S.9 and said Section 7.4, hereby retains jurisdiction to (after hearing) modify and/or amend the conditions to, or otherwise modify, amend or supplement, this Decision and to take other action necessary to determine and ensure compliance with the Decision.
- 4.3 This Decision applies only to the requested Special Permits and Site Plan Review. Other permits or approvals required by the By-Law, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this Decision.
- 4.4 The conditions contained within this Decision are limited to this specific application and are made without prejudice for any further modification or amendment.
- 4.5 No approval of any indicated signs or advertising devices is implied by this Decision.
- 4.6 The foregoing restrictions are stated for the purpose of emphasizing their importance but are not intended to be all-inclusive or to negate the remainder of the By-Law.
- 4.7 This Site Plan Special Permit shall lapse on March 2, 2023, if substantial use thereof has not sooner commenced, except for good cause. Any requests for an extension of the time limits set forth herein must be in writing to the Board at least thirty (30) days prior to March 2, 2023. The Board herein reserves its rights and powers to grant or deny such extension without a public hearing. The Board, however, shall not grant an extension as herein provided unless it finds that the use of the property in question or the construction of the site has not begun, except for good cause.
- 4.8 This decision shall be recorded in the Norfolk District Registry of Deeds and shall not become effective until the Petitioner has delivered a certified copy of the document to the Board. In

accordance with G.L. Chapter 40A, Section 11, this Major Site Plan Special Permit shall not take effect until a copy of this decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and either that no appeal has been filed or the appeal has been filed within such time is recorded in the Norfolk District Registry of Deeds and is indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at the risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

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

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

Witness our hands this 2nd day of March, 2021

NEEDHAM PLANNING BOARD

Jeanne S. McKnight, Chairman

Paul S. Alpert

Martin Jacobs

Adam Block

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss _____ 2021

On this _____ day of _____, 2021, 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

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 North Hill Needham, Inc. 865 Central Avenue, Needham, Massachusetts, for Property located at 865 Central Avenue, Needham, 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

Theodora K. Eaton, Town Clerk

Copy sent to:

Petitioner-Certified Mail # _____
Town Clerk
Building Inspector
Conservation Commission
Parties in Interest

Board of Selectmen
Engineering
Fire Department
Police Department

Board of Health
Director, PWD
Design Review Board
Evans Huber, Attorney

From: [Roy Cramer](#)
To: [Lee Newman](#); [Alexandra Clee](#)
Cc: [Evans Huber](#); [Roger Gurney](#)
Subject: North Hill draft decision
Date: Monday, March 1, 2021 12:58:05 PM

Lee, Alex and Members of the Planning Board:

I have reviewed the draft decision for the North Hill project. My only comment is related to Section 3.19 (d), which North Hill and I believe should be deleted. Please note the following:

1. Section 7.4.6 of the Zoning By-law provides the review criteria that the Board shall consider during site plan review. Section 7.4.6 (a) states that one of the criteria is "Protection of adjoining premises against seriously detrimental uses by provision for surface water drainage, sound and sight buffers and preservation of views, light and air. In this case, a replacement cooling tower is being proposed to replace an existing cooling tower that has been operated for nearly 20 years and has reached the end of its useful life. I do not believe that a replacement cooling tower with dimensions similar to the old cooling tower to be located only a few feet from the existing cooling tower, can be characterized as a "seriously detrimental" use.
2. The applicable noise standard established by the Massachusetts Department of Environmental Protection (which standard is utilized by the Town of Needham) is that the introduction of a noise source that increases sound levels by more than 10 decibels over ambient conditions, at the property line or nearest residential dwelling, is considered a noise impact. Also, if a noise source creates a pure tone condition over ambient conditions at the property line or nearest residential dwelling, that a noise impact is deemed to have been created.
3. The manufacturer's sound level data for both the existing Evapco cooling tower and the proposed Marley cooling tower have been reviewed and evaluated. Based on that data the sound level associated with the existing Evapco cooling tower is 5 decibels less than the proposed Marley cooling tower at the noise source. (The allowable limit is 10 decibels). Since sound dissipates with distance, the potential change in sound level attributed to the proposed cooling tower is expected to be lower at the property line and nearest inhabited residence, which are approximately 265 feet and 460 feet away from the existing cooling tower, respectively. As such, the proposed Marley cooling tower is not expected to generate sound levels above MassDEP's over ambient conditions.
4. In addition, the proposed Marley cooling tower is using newer technology that operates differently than the older Evapco unit. The older unit has a belt driven fan, which if not maintained properly can stretch or become loose over time and may cause a pure tone condition. The proposed unit has no belts. As such, the proposed Marley cooling tower is not

expected to generate pure tone conditions and will comply with MassDEP regulations.

5. In addition to the above, North Hill has purchased “splash attenuation filters” to be used in connection with the cooling tower, which will further reduce the sound emanating from the cooling tower. It is anticipated that the sound reduction may reach 5 decibels, which would result in no difference in sound at the source between the cooling towers.

The language currently included in Section 3.19(d) was designed in past years to address generated by emergency back-up generators, which are noisier pieces of equipment than cooling towers.

Section 3.19 still provides three other requirements that must be satisfied prior to the utilization of the 75 new parking spaces for parking. (Sections 3.19 (a), (b) and (c)). I request that Section 3.19(d) be deleted. The Applicant has stated, through me as their counsel, that in the unlikely event that an issue ever arose with respect to the replacement cooling tower not complying with the applicable noise standards, that North Hill would take such steps as are necessary to bring the system into compliance with applicable noise standards.

Kindly delete Section 3.19(d) from the draft Decision.

Thank you.

Roy A. Cramer, Esq.
Frieze Cramer Rosen & Huber, LLP
60 Walnut Street, Wellesley, MA 02481
781 943 4030 (Direct); 781 943 4040 (Fax)
Email: rac@128law.com

This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify Frieze Cramer Rosen & Huber, LLP by replying to this message, and destroy all copies of this message and any attachments. Thank you.

George Giunta, Jr.
ATTORNEY AT LAW*
281 Chestnut Street
Needham, MASSACHUSETTS 02492
*Also admitted in Maryland

TELEPHONE (781) 449-4520

FAX (781) 449-8475

February 26, 2021

Lee Newman
Planning Director
Town of Needham
1471 Highland Avenue
Needham, MA 02492

VIA EMAIL: LNewman@needhamma.gov

Re: Proposed Dental Practice
32 Chestnut Street

Dear Lee,

Please be advised that I represent a small dental practice interested in occupying the vacant space at 32 Chestnut Street. That space was most recently occupied by the Art Emporium, a custom framing and art supply store. It is my opinion that a dental practice is a use that would be allowed by right, pursuant to the use category in Section 3.2.2 of "Craft, consumer, professional or commercial service establishment dealing directly with the general public and not enumerated elsewhere in this section". In that regard, I note that the Building Inspector and the Board of Appeals have both previously taken such position.

However, in this case, the space is part of a building that was the subject of Major Project Site Plan Review in 1998, namely, application no. 98-10, with Decision, dated September 1, 1998 issued to Wilma Realty Trust, Alfred W. Greymont, Trustee and affected by Amendment dated July 30, 2002. Together, the Decision and the Amendment authorized the construction of a two-story building at 50 Chestnut Street, immediately adjacent to and on the same lot as the existing commercial block that contains the subject premises. Together, the buildings were proposed to contain retail, banking, office and support services, and Condition 2.2 of the Decision, as modified by the Amendment, requires:

That the proposed retail, banking and office building uses and support services shall contain the dimensions and be located on that portion of the locus *exactly as shown on the Plan* and in accordance with applicable dimensional requirements of the By-Law. That the Petitioner shall be permitted to erect partition walls within the building at his discretion provided the use allocation as shown on the Plan is maintained (emphasis added).

In addition, section 3.2 of the Decision imposes a limitation that:

There shall be no further development of this site without further site plan approval as required under Section 7.4 of the By-law. The Board, in accordance with M.G.L., Ch. 40A, S.9 and said Section 7.4, hereby retains jurisdiction to (after hearing) modify and/or amend the conditions to, or otherwise modify, amend or supplement, this decision and to take other action necessary to determine and ensure compliance with this decision.

As a result, even if allowed as of right as a use, the proposed dental practice will require further site plan review.

In connection with our recent conversations relative to this location, you have made me aware that, in 2015, the Board took the position that a dental practice was not permitted on the first floor in the Center Business District. As you would expect from my comments above, I disagree with such position, not just because the Board of Appeals and Building Inspector have otherwise interpreted the By-Law, but also because of the plain language of the By-Law.

The use category referenced above (i.e., “Craft, consumer, professional or commercial service establishment dealing directly with the general public and not enumerated elsewhere in this section”; hereinafter the “Craft Category”) clearly and plainly allows professional establishments dealing with the general public as of right. The only limiting language is the phrase “not enumerated elsewhere *in this section*” (emphasis added). Whereas neither a dental practice, nor any other substantially similar use, is enumerated anywhere in the table of uses in Section 3.2.2, it is my opinion that such limiting language does not apply.

Nevertheless, it is my understanding that in 2015, the Planning Board interpreted the following language in Section 3.2.2 as enumerating a dental office use (the “Office Provision”):

Smaller amounts of office space, or offices created through change of use from either retailing or any principal use listed below this one in this Section 3.2.2, such as garment manufacturing: (a) For consumer sales or service, (b) Others

However, the plain language of such Office Provision refers to office space generally and does not specifically reference any medical, dental or similar uses, which are a professional use requiring a license. Moreover, there is a significant difference between a small dental or medical practice that serves the general public in much the same way as a tailor or cobbler, and a general business or back-end office. Even an office that deals with the general public, but does not routinely have public visitors, such as an insurance office, is materially different.

In that regard, even if a dental practice were considered to be subsumed within the above Office Provision, it would qualify as a consumer service in much the same way as a financial advisor (Edward Jones – 1110 Great Plain Avenue), a real estate office (Berkshire Hathaway – 1089 Great Plain Avenue, Gibson Sotheby's International Realty – 936 Great Plain Avenue, Coldwell Banker – 1498 Highland Avenue, and William Raveis Real Estate – 168 Garden Street), or an optometrist (Needham Vision Center – 1020 Great Plain Avenue). I also note that there are currently two other dental practices in the Center Business District: one at 905 Great Plain (Fanikos Salib Dental Care) and the other at 20 Chestnut Street (Hoye Dental).

While I understand the intent behind the Board's position in 2015, I would assert that, at present, there are policy considerations to reevaluate and reconsider such view. As someone who grew up in Needham in the 1970s and 1980s, I recall when Needham Center was full of a variety of retail stores, and I have warm memories of the "sidewalk sale" days when the merchants would put their wares out on the sidewalks. While I would enjoy seeing Needham Center return to such a state, things are much different today and I don't believe that will ever happen. First came the malls, then the box stores and now Amazon and online shopping. Since the 1970s, brick and mortar retail has been under a constant assault by forces too powerful to resist. As a result, in Needham and many other cities and towns, retail stores have been replaced with salons, spas, banks, pizza shops and real estate offices. Such is the changing nature of the marketplace and the impact of restrictions that inadvertently favor such uses. In an ideal world, zoning is meant to be proactive. But the world is far from ideal, and just because a zoning bylaw allows for certain uses does not mean that they will ever materialize. That takes a combination of social and economic factors.

In the case of the Center Business District, the zoning we have today has been in place for a little over 30 years. It is based on a study undertaken in the late 1980s, well before the advent of box stores and the more recent rise and dominance of the online marketplace; not to mention the current and likely lingering impact of the Covid-19 pandemic. If the Town is not flexible in its interpretation and application of the By-Law, it may well lead to vacant storefronts or a downtown dominated by the above referenced uses that have proliferated in recent years. In light of such a prospect, would it be so bad to permit small medical and dental practices in the downtown? After all, unlike a business office, they generate foot traffic, and isn't that part of the goal? Moreover, are they really that different from a nail, hair or general salon?

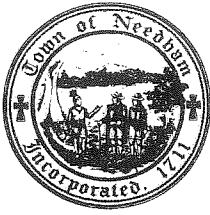
While my client could make application for further site plan review and discuss the above through such process, it would seem to make more sense, and would be our preference, to have a conversation prior to incurring the effort and expense of a full filing.

Therefore, please schedule this matter for an informal discussion with the Board at the next available opportunity.

Sincerely,

A handwritten signature in dark ink, appearing to read "George Giunta, Jr.", with a stylized, cursive-like script.

George Giunta, Jr



TOWN OF NEEDHAM, MA

PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT

500 Dedham Ave
Needham, MA 02492
781-455-7500

PLANNING
November 17, 2015

Mr. Jon Schneider, Chairman
Board of Appeals
Town Hall
Needham, MA 02492

Dear Mr. Schneider:

At its meeting of November 10, 2015, the Planning Board reviewed the applications to be heard by the Board of Appeals on Thursday, November 19, 2015, and made the following recommendations:

1. **Wellesley Country Club, 300 Wellesley Avenue, Wellesley, MA**, owner, has applied to the Board of Appeals for a Special Permit under Sections 1.4.6, 7.5.2 and any other applicable Sections of the By-law to alter the pre-existing non-conforming golf course to construct six "short course" holes along the Needham/Wellesley town line off of Brookside Road on the existing Wellesley Country Club property. The property is located at **0 Forest Street, Needham, MA** in the Single Residence A Zoning District.

The Planning Board previously commented on this case by letter dated September 11, 2015. The comments were as follows: The Planning Board makes NO COMMENT.

2. **Plugged In Band Program, owner**, will be appearing before the Board of Appeals to Extend the Special Permit issued on May 22, 2015 to operate a private school for youth rock band music and songwriting on a non-conforming lot and structure, and to waive strict adherence to parking requirements. The property is located at 40 Freeman Place in the Chestnut Street Business Zoning District.

The Planning Board previously commented on this case by letter dated December 8, 2014. The comments were as follows: The Planning Board makes NO COMMENT.

3. **Thomas Lambert, 272 Charles River Street, Needham, MA**, prospective purchaser has applied to the Board of Appeals for a Special Permit under Sections 1.4.7.4, 3.2, 7.5.2 and any other applicable Sections of the By-law to demolish an existing lawful, non-conforming two-family dwelling and detached garage with a 1,183-square foot lot coverage and to construct a new two-family dwelling and detached garage with a 2,499-square foot lot coverage. The property is located at **68 Pleasant Street, Needham, MA** in the Single Residence B Zoning District.

The Planning Board previously commented on this case by letter dated July 14, 2015. The comments were as follows:

The Planning Board notes that the proposed construction of a new two-family dwelling must comply with all applicable use, dimensional and density regulations of the Zoning By-Law, including but not limited to, the criteria enacted by the Town Meeting as Section 1.4.7 of the Zoning By-Law. The Board found the application submission to be noncompliant in that the lot coverage calculation as proposed at 25% was in excess of the 18% maximum standard of the By-Law. In the subject case, lot coverage may not exceed 18% as specified in Section 1.4.7.4 (c) of the By-Law. The Board notes further, that the proposed detached garage which appears to be 504 square feet in size would be excluded from the lot coverage calculation pursuant to Section 1.4.7.4 (e). However, even with this adjustment the maximum lot coverage requirement of 18% is exceeded and the Board therefore recommends that the application as proposed be denied. Finally, the Board notes that the relief requested under Section 1.4.6 and Section 3.2 of the Zoning By-Law does not appear necessary if all conditions under Section 1.4.7 are met.

4. **Hawthorne Builders, owners**, have made application to the Board of Appeals for a Special Permit under Sections 7.5.2, 6.1.2 and any other applicable Sections of the By-Law to add a third overhead garage door on a to be newly constructed home. The property is located at **132 Washington Avenue, Needham, MA** in the Single Residential B District.

The Planning Board makes NO COMMENT.

5. **John and Neila Whitbeck, 34 Meadowbrook Road, Needham, MA**, owners, have applied to the Board of Appeals for a Special Permit under Sections 1.4.7.4, 3.2, 7.5.2 and any other applicable Sections of the By-law to demolish an existing lawful, non-conforming two-family dwelling and detached garage; and to construct a new two-family dwelling with a 2,496-square-foot footprint. The property is located at **348 Manning Street and 34 Parkinson Street**, Needham, MA in the Single Residence B Zoning District.

The Planning Board previously commented on this case by letter dated September 11, 2015. The comments were as follows:

The Planning Board notes that, per Section 1.4.7.4 of the Zoning By-Law, the Zoning Board of Appeals must find that the proposed “reconstructed and enlarged building is appropriate in scale and mass for the neighborhood, with particular consideration for abutting properties”. It is not clear to the Planning Board that this criterion has been met. The Board was concerned with the overall height of the structure and the mass of the half story in particular which read more as a third story element.

6. **Viola E. Miller, owner**, made application to the Board of Appeals for a Special Permit under Sections 1.4.6, 3.2.1, 5.1.1.5 and any other applicable Sections of the Zoning By-law for the change, extension and alteration of a lawful pre-existing non-conforming contractor’s yard to allow for the storage of commercial vehicles such as paving and landscaping equipment and to waive strict adherence to parking and design requirements pursuant to Sections 5.1.2 and 5.1.3 of the Zoning By-Law. The property is located at **9 August Way, Needham, MA** in the Single Residential B District.

The Planning Board previously commented on this case by letter dated February 25, 2015. The comments were as follows:

The Planning Board recommends that the subject application be denied. The Planning Board notes that the storage of commercial vehicles is not a permitted use under the terms of the Definitive Subdivision Decision which the Board issued on April 27, 1999 (copy attached) and the Declaration of Restrictive Covenants which the property owner executed on August 18, 1999 (copy attached). We call your attention to paragraph 2 of the Decision which states as follows:

“The waiver of street construction requirements, as fully set forth in paragraphs 1.a, 1.b, 1.c, 1.d, and 1.e, is expressly conditioned upon and subject to the restriction that neither the owner nor any successor owner of Lot 5, Lot 6, Lot 7 or Lot 8, as shown on the Plan (hereinafter in paragraphs 2 through 11 inclusive referred to individually as a Lot or collectively as the Lots) shall use the Lots for any purpose other than single-family residential use, as shown on the Plan, as approved by the Board and recorded herewith, and their shall be no further division of the Lots as shown thereon without the approval of the Planning Board.”

The subdivision approval issued by the Planning Board included numerous roadway construction waivers. To assure that the undersized roadway and turnaround provided adequate access to the new lots the Board restricted use of the property to single-family residential use and precluded further subdivision of the property. The Petitioner exercised the rights granted in the subdivision decision. In addition, the Petitioner granted a Declaration of Restrictive Covenants to the Town which states in part “Neither the Owners, nor any successor owner or owners ... shall use any Lot for any purpose other than single family residential use or such other purpose as may be set forth in the Decision...” The Board fails to see how the storage of commercial vehicles can be considered a legally pre-existing non-forming use on the lot or how it meets the terms of the Definitive Subdivision Decision and Declaration of Restrictive Covenants noted above.

The Planning Board has since received an application for an Amendment to the Subdivision Decision to revise the Decision and Declaration of Restrictive Covenants to allow the proposal. The hearing was opened on August 11, 2015 and has been continued to the Planning Board meeting of December 1, 2015. Once the Board has issued a Decision, the Zoning Board of Appeals will be notified.

7. **Salib Fanikos Dental Care, LLC, tenant**, has applied to the Board of Appeals for a Special Permit under Sections 3.2.2, 7.5.2 and any other applicable Sections of the By-Law to allow more than one non-residential use on a lot in order to operate a dental practice on the first floor of a three-unit building. The property is located at **905-915 Great Plain Avenue, Needham, MA** in the Center Business District.

The Planning Board does not see the proposed use (dental office) as a use allowed on the first floor in the Center Business District. Section 3.2.2 of the Zoning By-Law lists as a permitted use in the Center Business District a “Craft, consumer, professional or commercial service establishment dealing directly with the general public and not enumerated elsewhere in the By-Law” (emphasis added). The Board finds the phrase “and not enumerated elsewhere in

the By-Law” to trigger the ground floor office use prohibition for the Center Business District found in Section 3.2.2 of the By-law which reads as follows:

“Smaller amounts of office space, or offices created through a change of use from either retailing or any principal use listed below this one in this Section 3.2.2, such as garment manufacturing:

Consumer sales or service	Y
Others	
Allowed on second floor only	Y”

Additionally, the Board notes that within the definition of the term “Medical Services Building” as allowed in the Medical Overlay District a dental practice is identified as an office use.

From 1986 (and perhaps before that date) through the May 1989 Town Meeting, all business districts in Needham were treated as one district, labeled “B” in the use table. Offices, and craft, consumer, professional or commercial service establishments, were permitted in the “B” district, and there was no distinction made between first and second floor locations. A copy of the pertinent section of the 1987 Zoning By-Law (page 18) is attached as Exhibit A.

In 1988 the Town began the process of studying two of the areas then zoned as “B” district (Center Business and Chestnut Street) recognizing their uniqueness of character, function, and location and the necessity of establishing land use regulations for the studied districts which would ensure future development that was compatible with community goals and objectives. Following a two year community engagement process the Land Use and Zoning Traffic Study of Needham Center was completed in April of 1988 and a Draft Zoning Amendment and Technical Report issued to implement its recommendations. The objectives of the zoning recommendations for Needham Center as stated in the Technical Report were as follows: “To create a more urban character which provides an interesting pedestrian streetscape. Recommendations include limiting ground floor space primarily to retail and other walk-in, consumer-oriented uses and requiring individual entrances for all ground floor uses, encouraging street level activity and attractive storefronts.” The draft zoning amendment as included in the Technical Report specifically limited offices to a second floor location. A copy of the pertinent section of the Draft Zoning Amendment and Technical Report is attached as Exhibit B (pages 3 and 11).

The land use recommendations from the Land Use and Zoning Traffic Study of Needham Center were adopted by Town Meeting in May of 1989. Two new zoning districts (Needham Center and Chestnut Street Business) were established both of which were now recognized in a single table. A copy of the pertinent section of the 1990 Zoning By-law implementing the noted regulations is attached as Exhibit C (pages 24 and 25). It should be noted that there were three relevant use categories articulated in the 1990 Zoning By-Law for the Center Business district as follow: Offices for consumer sale or service – allowed as of right; Craft, consumer or commercial service establishment providing goods and/or services at retail – allowed as of right; Offices (other than those listed above) – allowed on the second floor only.

In 1990 the Town's study of the remainder of the then "B" district continued (Avery Square Business and Hillside Avenue Business) with the issuance of the Highland Avenue Planning Project report in 1992. The land use recommendations for these two additional districts were then adopted at the November 1992 Town Meeting. At the time the Avery Square Business District and Hillside Avenue Business districts were established in 1992 it was decided that all of the Towns then business districts should be represented in a single table to include the Business, Chestnut Street Business, Center Business, Avery Square Business and Hillside Avenue Business Districts. The goal of this new table was to retain without change of outcome the then allowed use profile for the Business, Center Business and Chestnut Street Business districts while providing for the new Avery Square Business and Hillside Avenue Business districts in a single table. A copy of the pertinent section of the 1993 Zoning By-Law is attached as Exhibit D (page 31).

The Planning Board notes that since its adoption in 1989 the Town has historically interpreted a dental practice to be an office use to be relegated to a second floor location in the Center Business District. The Board notes that an office use is permitted as-of-right in all other business districts at a first floor location and it is to those locations where this use should be directed. Retaining the limited first floor footprint within the Center Business District for active retail and other walk-in consumer oriented uses was the goal of the zoning plan adopted for Needham Center in 1989 and should be respected. Accordingly, the Board recommends that the subject application be denied as the use is not permitted within the district.

8. **A Street Residential, LLC, c/o Normandy Real Estate Partners, 99 Summer Street, Boston, MA 02110 prospective purchaser**, has made application to the Board of Appeals for a Comprehensive Permit under M.G.L. Ch. 40B, to construct a 5-story 390-unit residential project and associated parking garage. The 5.13 acre parcel in the New England Business Center Zoning District is located at **the corner of A Street and Second Avenue, being a portion of 77 A Street, 189 B Street, 156 B Street and 0 A Street.**

The Planning Board will issue comment on this proposal by separate letter.

NEEDHAM PLANNING BOARD



Lee Newman
Director of Planning and Community Development

ZONING BY-LAW FOR THE TOWN OF NEEDHAM MASSACHUSETTS



As amended under Article 48 - March 26, 1925 Adjourned Annual
Town Meeting, as recodified to February 27, 1984 and as further
amended to May 13, 1987.

NEEDHAM TOWN PLANNING BOARD

Paul Killeen, Chairman
Stanley R. Tippet, Vice Chairman
David C. Gerber
Susan M. Glazer
Norman A. Homsy

H. Calvin Cook
Planning Director

3.2. Schedule of Use Regulations

<u>USE</u>	<u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1,2</u> <u>& 3</u>	<u>I</u>	<u>B</u>	<u>IND</u>	<u>IND-1</u>	<u>IND</u> <u>P*</u>
<u>AGRICULTURE</u>									
Farm, greenhouse, nursery, truck garden, provided the property contains a minimum of two and one half (2-1/2) acres	Y	Y	Y	Y		Y	Y	Y	Y
Salesroom or stand for agricultural and horti- cultural products pro- vided all products sold are grown or produced on the premises of the farm, greenhouse, nursery or truck garden, provided the subject contains a mini- mum of two and one half (2-1/2) acres	Y	Y	Y	Y		Y	Y	Y	Y
Sale during the Christmas season at a nursery or greenhouse of cut Christmas trees and wreaths grown or fabricated elsewhere than on the premises	Y	Y	Y	Y		Y	Y	Y	Y
<u>PUBLIC, SEMI-PUBLIC &</u> <u>INSTITUTIONAL</u>									
Church or other place of worship, parish house, rectory, convent and other religious institution	Y	Y	Y	Y		Y	Y	Y	Y
School - public, religious, sectarian or denominational	Y	Y	Y	Y		Y	Y	Y	Y
Public library and museum and philanthropic institution	Y	Y	Y	Y		Y	Y	Y	Y

<u>USE</u>	<u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1,2</u> <u>& 3</u>	<u>I</u>	<u>B</u>	<u>IND</u>	<u>IND-1</u>	<u>IND</u> <u>P*</u>
Public park and play-ground and municipal structure including a water tower and reservoir	Y	Y	Y	Y	Y	Y	Y	Y	Y
Public passenger station	Y	Y	Y	Y	Y	Y	Y	Y	Y
Private school, nursery, kindergarten or child care center	SP	SP	SP	SP	SP	SP	SP	SP	SP
Convalescent or nursing home, hospital	SP	SP	SP	SP	SP	SP	SP	SP	SP
Cemetery	SP	SP	SP	SP	SP	SP	SP	SP	SP
Private club not conducted as a business	SP	SP	SP	SP	SP	SP	SP	SP	SP

RESIDENCE

Single family detached dwelling	Y	Y	Y	Y	Y	Y	Y	Y	Y
PRD (See 4.2.5)	SP	SP	N	N	N	N	N	N	N
RC (See 4.2.6)	SP	SP	N	N	N	N	N	N	N
Two family detached dwelling	N	N	Y	Y	N	Y	N	N	N
Conversion of a single family dwelling to a two-family dwelling	N	N	Y	Y	N	N	N	N	N
Apartment or multi-family dwelling	N	N	N	Y	N	N	N	N	N

USESRA SRB GRA-1,2 I B IND IND-1 IND
&3 P*

The use of an owner-occupied structure for shared elderly housing for up to six elderly occupants (age 60 or over); provided, (1) that such structure so used shall not be sub-divided into separate apartments, (2) that occupancies therein by non-owners occupants shall be pursuant to an agreement specifying a term of occupancy of not less than one year, (3) that at any time there shall be in the town no more than fifty structures for which permits have been issued under authority of this section, (4) that no more than 20 percent of such structures shall be located in any one precinct of the town, and (5) that the number of structures for which permits are granted hereunder in any one year shall not exceed five.

SP SP SP SP SP** N N N

Boarding house with no arrangements of any description for private cooking or housekeeping

N N SP SP N Y Y Y

INSTITUTIONAL

Dormitory for a school with no provisions for private cooking or housekeeping

N N N N Y Y Y Y

**Applies only to structures in existence prior to December 31, 1982, otherwise "N".

USESRA SRB GRA-1,2 I B IND IND-1 IND
& 3 P*BUSINESS

Retail establishments
serving the general
public containing 5750
or more gross square feet
of floor area

N N N N N Y SP N N ✓

Retail establishments
serving the general public
containing 5750 gross
square feet of floor area
or incidental retail sales
which are accessory to a
permitted principal use
which does not involve 50%
of the total floor area
or 5750 square feet of the
principal use, whichever
is lesser. In multi-tenanted
structures the provisions of
this section will individually
apply to each tenant or
use and not to the
aggregate total of the
structure

N N N N N Y Y N N ✓

Retail trade or shop for
custom work or the making
of articles to be sold
at retail on the
premises

N N N N N Y Y N N ✓

Manufacturing clearly
incidental and accessory
to a retail use on the
same premises and the
product is customarily
sold on the
premises

N N N N N Y Y Y Y

Offices and banks

N N N N N Y Y Y Y

<u>USE</u>	<u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1,2</u> <u>& 3</u>	<u>I</u>	<u>B</u>	<u>IND</u>	<u>IND-1</u>	<u>IND</u> <u>P*</u>
Craft, consumer, professional or commercial service establishment dealing directly with the general public and not enumerated else- where in this section	N	N	N	N	N	Y	Y	Y	Y
Theatres, indoor moving picture shows, bowling alleys, skating rinks, billiard rooms, and similar commercial amusement or entertainment places	N	N	N	N	N	Y	Y	N	N ✓
Commercial garage for the storage or repair of vehicles; gasoline and oil filling station; trucking terminal, truck rental agency and similar material hauling enter- prise; the parking of vehicles involved in rubbish disposal and oil delivery and the private park- ing of vehicles for compensation	N	N	N	N	N	SP	SP	SP	SP
Laundry; coin-operated or self-service laundry or dry cleaning establishment; car wash	N	N	N	N	N	SP	SP	SP	SP
Lumber or fuel establish- ment; contractor's, stone mason's, junk or salvage yard	N	N	N	N	N	SP	SP	SP	SP
Airport, heliport, landing strip or area for any type of air- craft	N	N	N	N	N	N	N	N	N

<u>USE</u>	<u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1,2</u> <u>& 3</u>	<u>I</u>	<u>B</u>	<u>IND</u>	<u>IND-1</u>	<u>IND</u> <u>P*</u>
Hotel or motel	N	N	N	N	N	SP	SP	SP	SP
Eat in or take out restaurant or other eating establishment except a lunch counter incidental to a primary use	N	N	N	N	N	SP	SP	SP	SP
Veterinary Office and/or treatment facility	N	N	N	N	N	SP	SP	SP	SP
Medical Clinic	N	N	N	N	N	SP	SP	SP	SP
Outdoor parking in conjunction with the sale or leasing of new or used vehicles on applications filed after September 28, 1978	N	N	N	N	N	SP	SP	SP	SP
<u>MANUFACTURING</u>									
Wholesale distribution facilities or storage in an enclosed structure, excluding the storage of flammable liquids, gas or explosives	N	N	N	N	N	SP	Y	Y	Y
Industrial services, for example, machine shop, plumbing, electrical or carpentry shop or similar service	N	N	N	N	N	SP	Y	Y	Y
Welding shop	N	N	N	N	N	N	SP	SP	SP
Stone cutting, shaping, or finishing in an enclosed building	N	N	N	N	N	N	SP	SP	SP
Autobody or auto paint shop, provided that all work is carried out inside the building	N	N	N	N	N	N	SP	SP	SP
Outside truck service or repair for others including body work	N	N	N	N	N	N	SP	SP	SP

<u>USE</u>	<u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1,2</u> <u>& 3</u>	<u>I</u>	<u>B</u>	<u>IND</u>	<u>IND-1</u>	<u>IND</u> <u>P*</u>
Food processing primarily for wholesale use	N	N	N	N	N	N	SP	SP	SP
Bottling plant	N	N	N	N	N	N	Y	Y	Y
Equipment rental service	N	N	N	N	N	Y	Y	Y	Y
Garment manufact- uring	N	N	N	N	N	SP	Y	Y	Y
Laboratory or place where scientific experimental research is conducted not including genetic or biological research laboratory	N	N	N	N	SP	SP	Y	Y	Y
Genetic biological research	N	N	N	N	N	N	SP	SP	SP
Radio or television studio	N	N	N	N	N	SP	Y	Y	Y
Medical reference laboratories other than accessory to a medical office	N	N	N	N	N	SP	SP	SP	SP
Dental prosthesis laboratories other than accessory to a dental office	N	N	N	N	N	SP	Y	Y	Y
Light non-nuisance manufacturing providing that all resulting cinders, dust, flashing, fumes, gases, odors, smoke, noise, vibration, refuse matter, vapor, and heat are effectively con- fined in a building or are disposed in a manner so as not to create a nuisance or hazard to safety or health	N	N	N	N	N	SP	Y	Y	Y

<u>USE</u>	<u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1,2</u> <u>& 3</u>	<u>I</u>	<u>B</u>	<u>IND</u>	<u>IND-1</u>	<u>IND</u> <u>P*</u>
Any lawful purpose or special use not enumerated elsewhere in this By-Law	N	N	N	N		N	SP	SP	SP

More than one non-residential building or use on a lot where such buildings or uses are not detrimental to each other and are in compliance with all other requirements of this By-Law	N	N	N	N		SP	SP	SP	SP
--	---	---	---	---	--	----	----	----	----

ACCESSORY

Use of a room or rooms in a single or two-family dwelling as an office or studio by a resident professional person provided not more than one other person is regularly employed therein in connection with such use and that not more than 25% of the gross floor area, not in excess of 600 sq. ft., is regularly devoted to such use	Y	Y	Y	N		Y	Y	Y	Y
---	---	---	---	---	--	---	---	---	---

Customary home occupation engaged in by a resident of a single- or two-family dwelling which may include carpentry, cooking, preserving, dressmaking, handicrafts, repair of small appliances or other small items and similar activities, provided that (1) not more than one person is regularly employed therein in connection with such operation, (2) there is no exterior storage of material or equipment nor other exterior evidence of variation from the regular residential character of the premises, and (3) there is no advertising and signing and no public display or sale of goods on the premises	Y	Y	Y	Y		Y	Y	Y	Y
--	---	---	---	---	--	---	---	---	---

<u>USE</u>	<u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1,2</u> <u>& 3</u>	<u>I</u>	<u>B</u>	<u>IND</u>	<u>IND-1</u>	<u>IND</u> <u>P*</u>
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The taking of not more than four non-transient boarders of the leasing of not more than two rooms with no provisions for private cooking by a resident family in a single family dwelling

SP	SP	SP	Y	SP	Y	SP	SP	SP
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Cafe or lecture room associated with a private school

N	N	N	N	SP	SP	SP	SP	SP
---	---	---	---	----	----	----	----	----

Research laboratory or statistical office associated with a private school, including printing, binding and electrotyping as incidental uses

N	N	N	N	SP	SP	SP	SP	SP
---	---	---	---	----	----	----	----	----

Other customary and proper accessory uses, such as, but not limited to, garages, tool sheds, greenhouses and cabanas

Y	Y	Y	Y	Y	Y	Y	Y	Y
---	---	---	---	---	---	---	---	---

* Notwithstanding the provisions of this section, the following identified and described uses shall be prohibited in the Industrial Park District:

Retail store and/or retail salesroom

Retail-craft, consumer, or commercial service establishment except office and banks

Boarding houses.



NEEDHAM PLANNING BOARD
TOWN HALL
NEEDHAM, MA 02192

Draft Zoning Amendment and Technical Memorandum Needham Center

Prepared for
**Town of Needham
Planning Board**

By
Wallace, Floyd, Associates Inc.
Architects/Planners/Landscape Architects/Urban Designers

June 1989

number of spaces for which he contributed funding would need to be resolved in conjunction with the overall parking management program for Needham Center.

Although similar provisions are included in zoning by-laws for a number of towns in Massachusetts (Edgartown and Belmont) and across the country (Mill Valley, CA and Lake Forest, IL), to date none of these towns has built a structured parking facility. Lake Forest is in the process of planning a parking garage. Copies of the ordinances from these towns are included at the back of this report.

Planning and administrative problems associated with this type of program include the difficulty of convincing developers and lending institutions that a parking structure will be built to meet their parking demands. Unless sufficient funds are collected from developers to cover the full capital and operating costs of the facility, the Town will be required to provide additional funding.

Use of this provision is dependent upon the Town committing itself to building structured parking sometime in the future. Without reassurances that the money would be used to build parking, developers would not be inclined to pay into the fund. Also, unless/until a garage is built, any new development choosing to use this option will exacerbate the existing parking shortage.

In the short-term, the reduction of on-site parking requirements for building additions, in conjunction with a parking management program for Needham Center, may be sufficient to encourage some redevelopment activity.

Other Zoning Recommendations

Other recommended zoning changes for the Center Business District represent minor changes to use requirements, setbacks and site/building design. The objective of these changes is to create a more urban character which provides an interesting pedestrian streetscape. Recommendations include limiting ground floor space primarily to retail and other walk-in, consumer-oriented uses and requiring individual entrances for all ground floor uses, encouraging street level activity and attractive store fronts. Limiting the allowable number of driveways will help to create a more pedestrian environment. Any project which creates new space or alters existing building space within the Center Business District will be considered a Major Project, subject to site plan/design review. This provision is not intended to apply to cosmetic alterations such as exterior painting.

SCHEDULE OF USES

CB

AGRICULTURE

Farm, greenhouse, nursery, truck garden, provided the property contains a minimum of two and one half (2-1/2) acres Y

Salesroom or stand for agricultural and horticultural products provided all products sold are grown or produced on the premises of the farm, greenhouse, nursery or truck garden, provided the subject contains a minimum of two and one half (2-1/2) acres Y

Sale during the Christmas season at a nursery or greenhouse of cut Christmas trees and wreaths grown or fabricated elsewhere than on the premises Y

PUBLIC, SEMI-PUBLIC & INSTITUTIONAL

Church or other place of worship, parish house, rectory, convent and other religious institution Y

School - public, religious, sectarian or denominational Y
Public library and museum and philanthropic institution

Public park and playground and municipal structure including a water tower and reservoir Y

Public passenger station Y

Private school, nursery, kindergarten or child care center SP

Convalescent or nursing home, hospital SP

Cemetery SP

Private club not conducted as a business SP

RESIDENCE

Single family detached dwelling N
PRD (See 4.2.5)
RC (See 4.2.6)

Two family detached dwelling N

Conversion of a single family dwelling to a two-family dwelling N

Apartment or multi-family dwelling (allowed on second floor only; consistent with density requirements for A-1 Apartment District Y*

The use of an owner-occupied structure for shared elderly housing for up to six elderly occupants (age 60 or over); provided, (1) that such structure so used shall not be sub-divided into separate apartments, (2) that occupancies therein by non-owners occupants shall be pursuant to an agreement specifying a term of occupancy of not less than one year, (3) that at any time there shall be in the town no more than fifty structures for which permits have been issued under authority of this section, (4) that no more than 20 percent of such structures shall be located in any one precinct of the town, and (5) that the number of structures for which permits are granted hereunder in any one year shall not exceed five.

N

Boarding house with no arrangements of any description for private cooking or housekeeping

N

INSTITUTIONAL

Dormitory for a school with no provisions for private cooking or housekeeping

N

BUSINESS

Retail establishments serving the general public containing 5750 or more gross square of floor area

Y

Retail establishments serving the general public containing less than 5750 gross square feet of floor area or incidental retail sales which are accessory to a permitted principal use which does not involve 50% of the total floor area or 5750 square feet of the principal use, whichever is lesser. In multi-tenanted structures the provisions of this section will individually apply to each tenant or use and not to the aggregate total of the structure

Y

Retail trade or shop for custom work or the making of articles to be sold at retail on the premises

Y

Manufacturing clearly incidental and accessory to a retail use on the same premises and the product is customarily sold on the premises

Y

Offices (second floor only) and banks

Y*

Craft, consumer, professional or commercial service establishment dealing directly with the general public and not enumerated elsewhere in this section

Y

Theatres and indoor moving picture shows

SP*

Commercial garage for the storage or repair of vehicles; gasoline and oil filling station; trucking terminal, truck rental agency and similar material hauling enterprise; the parking of vehicles involved in rubbish disposal and oil delivery and the private parking of vehicles for compensation	N
Laundry; coin-operated or self-service laundry or dry cleaning establishment; car wash	SP
Lumber or fuel establishment; contractor's, stone mason's, junk or salvage yard	N
Airport, heliport, landing strip or area for any type of aircraft	N
Hotel or motel	SP
Eat in restaurant except a lunch counter incidental to a primary use	SP*
Take-out food establishment as an accessory to a food retail or other non-consumptive retail establishment	Y*
Veterinary Office and/or treatment facility	SP
Medical Clinic	SP
Outdoor parking in conjunction with the sale or leasing of new or used vehicles on applications filed after September 28, 1978	N
Bakery	Y*
Grocery Store (under 1000 SF)	Y*

MANUFACTURING

Wholesale distribution facilities or storage in an enclosed structure, excluding the storage of flammable liquids, gas or explosives	N
Industrial services, for example, machine shop, plumbing, electrical or carpentry shop or similar service	N
Welding shop	N
Stone cutting, shaping, or finishing in an enclosed building	N
Autobody or auto paint shop, provided that all work is carried out inside the building	N
Outside truck service or repair for others including body work	N
Food processing primarily for wholesale use	N

Bottling plant	N
Equipment rental service	N
Garment manufacturing	N
Laboratory or place where scientific experimental research is conducted not including genetic or biological research laboratory	N
Genetic biological research	N
Radio or television studio	SP
Medical reference laboratories other than accessory to a medical office	SP
Dental prosthesis laboratories other than accessory to a dental office	SP
Light non-nuisance manufacturing providing that all resulting cinders, dust, flashing, fumes, gases, odors, smoke, noise, vibration, refuse matter, vapor, and heat are effectively confined in a building or are disposed in a manner so as not to create a nuisance or hazard to safety or health	N
Any lawful purpose or special use not enumerated elsewhere in this By-Law	SP
More than one non-residential building or use on a lot where such buildings or uses are not detrimental to each other and are in compliance with all other requirements of this By-Law	SP

ACCESSORY

Use of a room or rooms in a single or two-family dwelling as an office or studio by a resident professional person provided not more than one other person is regularly employed there-in in connection with such use and that not more than 25% of the gross floor area, not in excess of 600 sq. ft., is regularly devoted to such use	Y
Customary home occupation engaged in by a resident of a single- or two-family dwelling which may include carpentry, cooking, preserving, dressmaking, handicrafts, repair of small appliances or other small items and similar activities, provided that (1) not more than one person is regularly employed therein in connection with such operation, (2) there is no exterior storage of material or equipment nor other exterior evidence of variation from the regular residential character of the premises, and (3) there is no advertising and signing and no public display or sale of goods on the premises	Y

The taking of not more than four non-transient boarders or the leasing of not more than two rooms with no provisions for private cooking by a resident family in a single family dwelling	Y
Cafe or lecture room associated with a private school	SP
Research laboratory or statistical office associated with a private school, including printing, binding and electrotyping as incidental uses	SP
Other customary and proper accessory uses, such as, but not limited to, garages, tool sheds, greenhouses and cabanas	Y

* Indicates wording which has been changed from that included in existing Needham Zoning By-Law

ZONING BY-LAW FOR THE TOWN OF NEEDHAM MASSACHUSETTS



As amended under Article 48 - March 26, 1925 Adjourned
Annual Town Meeting, as recodified to February 27, 1984
and as further amended to May 9, 1990.

NEEDHAM TOWN PLANNING BOARD

David C. Gerber, Chairman
Joanne Hull Roth, Vice Chairman
Norman A. Homsy
Paul Killeen
Stanley R. Tippet

H. Calvin Cook
Planning Director

3.2 Schedule of Use Regulations

<u>USE</u>	<u>RRC</u> <u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1,2</u> <u>& 3</u>	<u>I</u>	<u>B</u>	<u>IND</u>	<u>IND-1</u>	<u>IND</u> <u>P*</u>
<u>AGRICULTURE</u>									
Farm, greenhouse, nursery, truck garden, provided the subject property contains a minimum of two and one half(2-1/2) acres		Y	Y	Y	Y	Y	Y	Y	Y
Salesroom or stand for agricultural and horticultural products provided all products sold are grown or produced on the premises of the farm, greenhouse, nursery or truck garden, provided the subject property contains a minimum of two and one half (2-1/2) acres		Y	Y	Y	Y	Y	Y	Y	Y
Sale during the Christmas season at a nursery or greenhouse of cut Christmas trees and wreaths grown or fabricated elsewhere than on the premises	Y	Y	Y	Y	Y	Y	Y	Y	Y
<u>PUBLIC, SEMI-PUBLIC & INSTITUTIONAL</u>									
Church or other place of worship, parish house, rectory, convent and other religious institution	Y	Y	Y	Y	Y	Y	Y	Y	Y
School - public, religious, sectarian or denominational	Y	Y	Y	Y	Y	Y	Y	Y	Y
Public library and museum and philanthropic institution	Y	Y	Y	Y	Y	Y	Y	Y	Y

<u>USE</u>	<u>RRC</u> <u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1,2</u> <u>& 3</u>	<u>I</u>	<u>B</u>	<u>IND</u>	<u>IND-1</u>	<u>IND</u> <u>P*</u>
Public park and play-ground and municipal structure including a water tower and reservoir	Y	Y	Y	Y	Y	Y	Y	Y	Y
Public passenger station	Y	Y	Y	Y	Y	Y	Y	Y	Y
Private school, nursery, kindergarten or child care center	SP	SP	SP	SP	SP	SP	SP	SP	SP
Convalescent or nursing home, hospital	SP	SP	SP	SP	SP	SP	SP	SP	SP
Cemetery	SP	SP	SP	SP	SP	SP	SP	SP	SP
Private club not conducted as a business	SP	SP	SP	SP	SP	SP	SP	SP	SP

RESIDENCE

Single family detached dwelling	Y	Y	Y	Y	Y	Y	Y	Y	Y
PRD (See 4.2.5)	SP	SP	N	N	N	N	N	N	N
RC (See 4.2.6)	SP	SP	N	N	N	N	N	N	N
Two family detached dwelling	N	N	Y	Y	N	Y	N	N	N
Conversion of a single family dwelling to a two-family dwelling	N	N	Y	Y	N	N	N	N	N
Apartment or multi-family dwelling	N	N	N	Y	N	N	N	N	N

USERRCSRA SRBGRA-1,2IBINDIND-1IND& 3P*

The use of an owner-occupied structure for shared elderly housing for up to six elderly occupants (age 60 or over); provided, (1) that such structure so used shall not be sub-divided into separate apartments, (2) that occupancies therein by non-owners occupants shall be pursuant to an agreement specifying a term of occupancy of not less than one year, (3) that at any time there shall be in the town no more than fifty structures for which permits have been issued under authority of this section, (4) that no more than 20 percent of such structures shall be located in any one precinct of the town, and (5) that the number of structures for which permits are granted hereunder in any one year shall not exceed five.

SP SP SP SP SP** N N N

Boarding house with no arrangements of any description for private cooking or housekeeping

N N SP SP N Y Y Y

INSTITUTIONAL

Dormitory for a school with no provisions for private cooking or housekeeping

N N N N Y Y Y Y Y

**Applies only to structures in existence prior to December 31, 1982, otherwise "N".

<u>USE</u>	<u>RRC</u> <u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1,2</u> <u>& 3</u>	<u>I</u>	<u>B</u>	<u>IND</u>	<u>IND-1</u>	<u>IND</u> <u>P*</u>
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BUSINESS

Retail establishments serving the general public containing 5750 or more gross square feet of floor area	N	N	N	N	N	Y	SP	N	N
--	---	---	---	---	---	---	----	---	---

Retail establishments serving the general public containing less than 5750 gross square feet of floor area or incidental retail sales which are accessory to a permitted principal use which does not involve 50% of the total floor area or 5750 square feet of the principal use, whichever is lesser. In multi-tenanted structures the provisions of this section will individually apply to each tenant or use and not to the aggregate total of the structure	N	N	N	N	N	Y	Y	N	N
---	---	---	---	---	---	---	---	---	---

Retail trade or shop for custom work or the making of articles to be sold at retail on the premises	N	N	N	N	N	Y	Y	N	N
---	---	---	---	---	---	---	---	---	---

Manufacturing clearly incidental and accessory to a retail use on the same premises and the product is customarily sold on the premises	N	N	N	N	N	Y	Y	Y	Y
---	---	---	---	---	---	---	---	---	---

Offices and banks	N	N	N	N	N	Y	Y	Y	Y
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<u>USE</u>	<u>RRC</u> <u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1,2</u> <u>& 3</u>	<u>I</u>	<u>B</u>	<u>IND</u>	<u>IND-1</u>	<u>IND</u> <u>P*</u>
Craft, consumer, professional or commercial service establishment dealing directly with the general public and not enumerated elsewhere in this section	N	N	N	N	N	Y	Y	Y	Y
Theatres, indoor moving picture shows, bowling alleys, skating rinks, billiard rooms, and similar commercial amusement or entertainment places	N	N	N	N	N	Y	Y	N	N
Commercial garage for the storage or repair of vehicles; gasoline and oil filling station; trucking terminal, truck rental agency and similar material hauling enterprise; the parking of vehicles involved in rubbish disposal and oil delivery and the private parking of vehicles for compensation	N	N	N	N	N	SP	SP	SP	SP
Laundry; coin-operated or self-service laundry or dry cleaning establishment; car wash	N	N	N	N	N	SP	SP	SP	SP
Lumber or fuel establishment; contractor's, stone mason's, junk or salvage yard	N	N	N	N	N	SP	SP	SP	SP
Airport, heliport, landing strip or area for any type of aircraft	N	N	N	N	N	N	N	N	N

USE	RRC									
	SRA	SRB	GR	A-1,2 & 3	I	B	IND	IND-1	IND P*	
Hotel or motel	N	N	N	N	N	SP	SP	SP	SP	
Eat in or take out restaurant or other eating establishment except a lunch counter incidental to a primary use	N	N	N	N	N	SP	SP	SP	SP	
Veterinary Office and/or treatment facility	N	N	N	N	N	SP	SP	SP	SP	
Medical Clinic	N	N	N	N	N	SP	SP	SP	SP	
Outdoor parking in conjunction with the sale or leasing of new or used vehicles on applications filed after September 28, 1978	N	N	N	N	N	SP	SP	SP	SP	
MANUFACTURING										
Wholesale distribution facilities or storage in an enclosed structure, excluding the storage of flammable liquids, gas or explosives	N	N	N	N	N	SP	Y	Y	Y	
Industrial services, for example, machine shop, plumbing, electrical or carpentry shop or similar service	N	N	N	N	N	SP	Y	Y	Y	
Welding shop	N	N	N	N	N	N	SP	SP	SP	
Stone cutting, shaping, or finishing in an enclosed building	N	N	N	N	N	N	SP	SP	SP	
Autobody or auto paint shop, provided that all work is carried out inside the building	N	N	N	N	N	N	SP	SP	SP	
Outside truck service or repair for others including body work	N	N	N	N	N	N	SP	SP	SP	

<u>USE</u>	<u>RRC</u> <u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1,2</u> <u>& 3</u>	<u>I</u>	<u>B</u>	<u>IND</u>	<u>IND-1</u>	<u>IND</u> <u>P*</u>
Food processing primarily for wholesale use	N	N	N	N	N	N	SP	SP	SP
Bottling plant	N	N	N	N	N	N	Y	Y	Y
Equipment rental service	N	N	N	N	N	Y	Y	Y	Y
Garment manufacturing	N	N	N	N	N	SP	Y	Y	Y
Laboratory or place where scientific experimental research is conducted not including genetic or biological research laboratory	N	N	N	N	SP	SP	Y	Y	Y
Genetic biological research	N	N	N	N	N	N	SP	SP	SP
Radio or television studio	N	N	N	N	N	SP	Y	Y	Y
Medical reference laboratories other than accessory to a medical office	N	N	N	N	N	SP	SP	SP	SP
Dental prosthesis laboratories other than accessory to a dental office	N	N	N	N	N	SP	Y	Y	Y
Light non-nuisance manufacturing providing that all resulting cinders, dust, flashing, fumes, gases, odors, smoke, noise, vibration, refuse matter, vapor, and heat are effectively confined in a building or are disposed in a manner so as not to create a nuisance or hazard to safety or health	N	N	N	N	N	SP	Y	Y	Y

<u>USE</u>	<u>RRC</u> <u>SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1,2</u> <u>& 3</u>	<u>I</u>	<u>B</u>	<u>IND</u>	<u>IND-1</u>	<u>IND</u> <u>P*</u>
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Any lawful purpose or special use not enumerated elsewhere in this By-Law

N	N	N	N	N	N	SP	SP	SP	SP
---	---	---	---	---	---	----	----	----	----

More than one non-residential building or use on a lot where such buildings or uses are not detrimental to each other and are in compliance with all other requirements of this this By-Law

N	N	N	N	SP	SP	SP	SP	SP
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ACCESSORY

Use of a room or rooms in a single or two-family dwelling as an office or studio by a resident professional person provided not more than one other person is regularly employed therein in connection with such use and that not more than 25% of the gross floor area, not in excess of 600 sq. ft., is regularly devoted to such use

Y	Y	Y	N	Y	Y	Y	Y	Y
---	---	---	---	---	---	---	---	---

Customary home occupation engaged in by a resident of a single- or two-family dwelling which may include carpentry, cooking, preserving, dressmaking, handicrafts, repair of small appliances or other small items and similar activities, provided that (1) not more than one person is regularly employed therein in connection with such operation, (2) there is no exterior storage of material or equipment nor other exterior evidence of variation from the regular residential character of the premises, and (3) there is no advertising and signing and no public display or sale of goods on the premises

Y	Y	Y	Y	Y	Y	Y	Y	Y
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USERRCSRA SRBGRA-1,2
& 3IBINDIND-1IND
P*

The taking of not more than
four non-transient boarders
of the leasing of not more
than two rooms with no
provisions for private
cooking by a resident family
in a single family
dwelling

SP SP SP Y SP Y SP SP SP

Cafe or lecture room
associated with a
private school

N N N N SP SP SP SP SP

Research laboratory
or statistical office
associated with a
private school, in-
cluding printing, binding
and electrotyping as
incidental uses

N N N N SP SP SP SP SP

Other customary and proper
accessory uses, such as,
but not limited to,
garages, tool sheds,
greenhouses and
cabanas

Y Y Y Y Y Y Y Y Y

*Notwithstanding the provisions of this section, the following
identified and described uses shall be prohibited in the Industrial
Park District:

Retail store and/or retail salesroom

Retail-craft, consumer, or commercial service establishment except
office and banks

Boarding houses.

3.2.1 Uses in the Chestnut Street and Center Business Districts. The following schedule of use regulations shall apply in a Chestnut Street Business District and in the Center Business District, respectively:

USE

CSB CB

AGRICULTURE

Farm, greenhouse, nursery, truck garden, provided the subject property contains a minimum of two and one-half (2 1/2) acres

N N

Salesroom or stand for agricultural and horticultural products provided all products sold are grown or produced on the premises of the farm, greenhouse, nursery or truck garden, provided the subject property contains a minimum of two and one-half (2 1/2) acres

N N

Sale during the Christmas season at a nursery or greenhouse of cut Christmas trees and wreaths grown or fabricated elsewhere than on the premises

N N

PUBLIC, SEMI-PUBLIC & INSTITUTIONAL

Church or other place of worship, parish house, rectory, convent and other religious institution

Y Y

School - public, religious, sectarian or denominational; Public library and museum and philanthropic institution

Y Y

Public park and playground and municipal structure

Y Y

Public passenger station

SP SP

Private school, nursery, kindergarten or child care center

SP SP

Convalescent or nursing home, hospital

SP SP

Cemetery

N N

Private club not conducted as a business

SP SP

RESIDENCE

CSB CB

Single-family detached dwelling

PRD (see 4.2.5)

RC (see 4.2.6)

N N
N N
N N

Two-family detached dwelling

N N

Conversion of a single-family dwelling to a two-family dwelling

N N

Apartment or multi-family dwelling (allowed on second floor only); consistent with density requirements for A-1 Apartment District

SP SP

The use of an owner-occupied structure for shared elderly housing for up to six elderly occupants (age 60 or over); provided, (1) that such structure so used shall not be subdivided into separate apartments, (2) that occupancies therein by non-owner occupants shall be pursuant to an agreement specifying a term of occupancy of not less than one year, (3) that at any time there shall be in the Town no more than fifty structures for which permits have been issued under authority of this section, (4) that no more than 20 percent of such structures shall be located in any one precinct of the Town, and (5) that the number of structures for which permits are granted hereunder in any one year shall not exceed five.

N N

Boarding house with no arrangements of any description for private cooking or housekeeping

N N

INSTITUTIONAL

Dormitory for a school with no provisions for private cooking or housekeeping

N N

BUSINESS

Retail sales, excluding grocery store, and not including the outdoor display of goods nor the outdoor storage or display of motor vehicles

Y Y

Retail trade or shop for custom work or the making of articles or goods to be sold at retail on the premises

Y Y

Manufacturing clearly incidental and accessory to a retail use on the same premises and the product is customarily sold on the premises

Y Y

Banks

Y Y

Offices for consumer sales or service

Y Y

Business continued

	<u>CSB</u>	<u>CB</u>
<u>Craft, consumer or commercial service establishment providing goods and/or services at retail</u>	Y	Y
Offices (other than those listed above)	Y	Y*
Theatres and indoor moving picture shows; pool and billiard rooms	SP	SP
Electronic game and amusement arcades	N	N
Automobile service station, excluding repair services	SP	N
Commercial garage for the storage or repair of vehicles; gasoline and oil filling station; trucking terminal, truck rental agency and similar material hauling enterprise; the parking of vehicles involved in rubbish disposal or oil delivery; and the private parking of vehicles for compensation	N	N
Laundry; coin operated or self-service laundry or dry-cleaning establishment	SP	SP
Lumber or fuel establishment; contractor's, stone mason's, junk or salvage yard	N	N
Airport, heliport, landing strip or area for any type of aircraft	N	N
Hotel or motel	N	N
Restaurant serving meals for consumption on the premises and at tables with service provided by waitress or waiter	SP	SP
Take-out operation accessory to the above	SP	SP
Take-out food counter as an accessory to a food retail or other non-consumptive retail establishment	SP	SP
Retail sales of ice cream, frozen yogurt and similar products for consumption on or off the premises	SP	SP
Take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere	SP	N
Fast-food establishment offering over-the-counter sale of on/off premises prepared food or beverages primarily intended for immediate consumption and prepared in such a manner to be readily eaten from easily disposed containers	SP	N

* on second floor only

Business continued

	<u>CSB</u>	<u>CB</u>
Veterinary office and/or treatment facility, but excluding the boarding of animals	SP	SP
Medical Clinic	SP	SP
Outdoor parking in conjunction with the sale or leasing of new or used vehicles on applications filed after September 28, 1978	N	N
Grocery Store	Y	Y*

MANUFACTURING

Wholesale distribution facilities or storage in an enclosed structure, excluding the storage of flammable liquids, gas or explosives	N	N
Industrial services, for example, machine shop, plumbing, electrical or carpentry shop or similar service	N	N
Welding shop	N	N
Stone cutting, shaping, or finishing in an enclosed building	N	N
Autobody or auto paint shop, provided that all work is carried out inside the building	N	N
Outside truck service for repair for others including body work	N	N
Food processing primarily for wholesale use	N	N
Bottling plant	N	N
Equipment rental service	N	N
Garment manufacturing	N	N
Laboratory or place where scientific experimental research is conducted not including genetic or biological research laboratory	N	N
Genetic biological research	N	N
Radio or television studios	N	N
Medical reference laboratories other than accessory to a medical office	N	N
Dental prosthesis laboratories other than accessory to a dental office	N	N

* under 1,000 square feet of gross floor area

Manufacturing continued

CSB CB

Light non-nuisance manufacturing providing that all resulting cinders, dust, flashing, fumes, gases, odors, smoke, noise, vibration, refuse matter, vapor and heat are effectively confined in a building or are disposed in a manner so as not to create a nuisance or hazard to safety or health

N N

ACCESSORY

Use of a room or rooms in a single- or two-family dwelling as an office or studio by a resident professional person provided not more than one other person is regularly employed therein in connection with such use and that not more than 25% of the gross floor area, not in excess of 600 sq. ft., is regularly devoted to such use

N N

Customary home occupation engaged in by a resident of a single- or two-family dwelling which may include carpentry, cooking, preserving, dressmaking, handicrafts, repair of small appliances or other small items and similar activities, provided that (1) not more than one person is regularly employed therein in connection with such operation, (2) there is no exterior storage of material or equipment nor other exterior evidence of variation from the regular residential character of the premises, and (3) there is no advertising and signing and no public display or sale on the premises

N N

The taking of not more than four non-transient boarders or the leasing of not more than two rooms with no provisions for private cooking by a resident family in a single-family dwelling

N N

Cafe or lecture room associated with a private school

N N

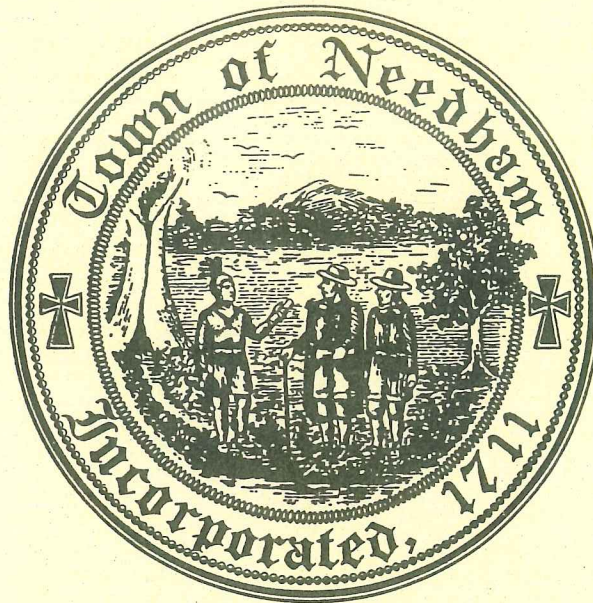
Research laboratory or statistical office associated with a private school, including printing, binding and electrotyping as incidental uses

N N

Other accessory uses incidental to lawful principal uses

SP SP

**ZONING BY-LAW
OF THE
TOWN OF NEEDHAM**



**As amended under Article 48 - March 26, 1925 Adjourned
Annual Town Meeting, as recodified to February 27, 1984
and as further amended to May 3, 1993.**

NEEDHAM PLANNING BOARD

**Paul Killeen, Chairman
David W. Kunhardt, Vice-Chairman
Devra G. Bailin
Frank S. Gallelo
David C. Gerber**

**Lee Newman
Planning Director**

3.2.2 Uses in the Business, Chestnut Street Business, Center Business, Avery Square Business and Hillside Avenue Business Districts

The following schedule of use regulations shall apply in the B, CSB, CB, ASB, and HAB districts.

<u>USE</u>	<u>B</u>	<u>CSB</u>	<u>CB</u>	<u>ASB</u>	<u>HAB</u>
Farm, greenhouse, nursery, truck garden, provided the subject property contains a minimum of 2 1/2 acres	Y	Y	Y	Y	Y
Salesroom or stand for agricultural and horticultural products provided all products sold are grown or produced on the premises of the farm, greenhouse, nursery or truck garden, provided the subject property contains a minimum of 2 1/2 acres	Y	Y	Y	Y	Y
Sale during the Christmas season at a nursery or greenhouse of cut Christmas trees and wreaths grown or fabricated elsewhere than on the premises	Y	Y	Y	Y	Y
Church or other place of worship, parish house, rectory, convent and other religious institution	Y	Y	Y	Y	Y
School - public, religious, sectarian or denominational	Y	Y	Y	Y	Y
Dormitory for a school with no provisions for private cooking or housekeeping	Y	N	N	Y	Y
Public library and museum and philanthropic institution	Y	Y	Y	Y	Y
Public park and playground and municipal structure including a water tower and reservoir	Y	Y	Y	Y	Y
Public passenger station	Y	SP	SP	Y	Y

USE

	<u>B</u>	<u>CSB</u>	<u>CB</u>	<u>ASB</u>	<u>HAB</u>
Child care facility	Y	Y	Y	Y	Y
Other private school, nursery, or kindergarten	SP	SP	SP	SP	SP
Convalescent or nursing home, hospital	SP	SP	SP	Y	Y
Cemetery	SP	N	N	Y	Y
Private club not conducted as a business	SP	SP	SP	SP	SP
Single family detached dwelling	Y	N	N	Y	Y
Planned residential development	N	N	N	SP	SP
Residential compound	N	N	N	SP	SP
Two-family detached dwelling	Y	N	N	Y	Y
Conversion of a single family dwelling to a two-family dwelling	N	N	N	Y	Y
Apartment or multifamily dwelling *Allowed on second floor only; consistent with density requirements for A-1	N	SP*	SP*	SP	SP

The use of an owner-occupied structure for shared elderly housing for up to six elderly occupants (60+); provided, (1) that such structure so used shall not be subdivided into separate apartments, (2) that occupancies therein by nonowners occupants shall be pursuant to an agreement specifying a term of occupancy of not less than one year, (3) that at any time there shall be in the town no more than fifty structures for which

USEB CSB CB ASB HAB

permits have been issued under the authority of this section, (4) that no more than 20% of such structures shall be located in any one precinct of the town, and (5) that the number of structures for which permits are granted in any one year shall not exceed 5

*Applies only to structures in existence prior to Dec. 31, 1982, otherwise N

SP* N N SP SP

Boarding house with no arrangements of any description for private cooking or housekeeping

Y N N Y Y

Retail establishment serving the general public if containing 10,000 or more gross sq. ft. of floor area ("Complex Development"):

Grocery store

Y Y N SPC N

Outdoor parking, storage or display of motor vehicles in conjunction with the sale or leasing of new or used motor vehicles on applications filed after September 28, 1978

SP N N N N

Other outdoor display of goods

Y N N N N

Retail trade or shop for custom work or the making of articles to be sold at retail on the premises

Y Y Y SPC N

Other retailing

Y Y Y SPC N

Retail establishments serving the general public if containing more than 5750 but less than 10,000 gross sq. ft. of floor area:

Grocery store

Y Y N Y N

Outdoor parking, storage or display of motor vehicles in conjunction with the sale or leasing of new or used motor vehicles on applications filed after September 28, 1978

SP N N N N

<u>USE</u>	<u>B</u>	<u>CSB</u>	<u>CB</u>	<u>ASE</u>	<u>HAB</u>
Other outdoor display of goods	Y	N	N	N	N
Retail trade or shop for custom work or the making of articles to be sold at retail on the premises	Y	Y	Y	Y	N
Other retailing	Y	Y	Y	Y	N
Retail establishments serving the general public if containing less than 5750 gross sq. ft. of floor area or incidental retail sales which are accessory to a permitted principal use which does not involve 50% of the total floor area or 5750 square feet of the principal use, whichever is lesser. In multi-tenanted structures the provisions of the section will individually apply to each tenant or use and not to the aggregate total of the structure:					
Grocery store	Y	Y	Y*	Y	SP
* If under 1,000 sq. ft. of gross floor area					
Outdoor parking, storage or display of motor vehicles in conjunction with the sale or leasing of new or used motor vehicles on applications filed after September 28, 1978	SP	N	N	N	N
Other outdoor display of goods	Y	N	N	N	N
Retail trade or shop for custom work or the making of articles to be sold at retail on the premises	Y	Y	Y	Y	Y
Other retailing	Y	Y	Y	Y	SP
Manufacturing clearly incidental and accessory to a retail use on the same premises and the product is customarily sold on the premises					
	Y	Y	Y	Y	Y
Banks	Y	Y	Y	Y	Y

USEB CSB CB ASB HAB

offices totalling more than 20,000 square feet, unless created through change of use from either retailing or any principal use listed below this one in Section 3.2.2, such as garment manufacturing:

For consumer sales or service

Y Y Y SPC SPC

Others

Y Y Y* SPC SPC

* Allowed on second floor only

Smaller amounts of office space, or offices created through change of use from either retailing or any principal use listed below this one in this Section 3.2.2, such as garment manufacturing:

For consumer sales or service

Y Y Y Y Y

Others

Y Y Y* Y Y

* Allowed on second floor only

Craft, consumer, professional or commercial service establishment dealing directly with the general public and not enumerated elsewhere in this section

Y Y Y Y Y

Theatres and indoor moving picture shows; pool and billiard rooms

Y SP SP SP N

Electronic game and amusement arcades

Y N N N N

Bowling alleys, skating rinks, and similar commercial amusement or entertainment places

Y N N N N

Automobile service station, excluding repair services

SP SP N N N

Other commercial garage for the storage or repair of vehicles; gasoline and oil filling station;

USEBCSBCBASBHAB

trucking terminal, truck rental agency and similar material hauling enterprise; the parking of vehicles involved in rubbish disposal and oil delivery and the private parking of vehicles for compensation

SP N N N N

Car wash

SP N N N N

Laundry; coin operated or self-service laundry or dry cleaning establishment

SP SP SP SP SP

Lumber or fuel establishment; contractor's, stone mason's, junk or salvage yard

SP N N N N

Airport, heliport, landing strip or area for any type of aircraft

N N N N N

Hotel or motel

SP N N N SP

Eat in or take out restaurant or other eating establishment except a lunch counter incidental to a primary use:

Restaurant serving meals for consumption on the premises and at tables with service provided by waitress or waiter

SP SP SP SP N

Take-out operation accessory to the above

SP SP SP SP N

Take-out food counter as an accessory to a food retail or other non-consumptive retail establishment

SP SP SP SP N

Retail sales of ice cream, frozen yogurt and similar products for consumption on or off the premises

SP SP SP SP N

Take-out establishment primarily engaged in the dispensing of prepared foods to persons carrying food and beverage away for preparation and consumption elsewhere

SP SP N SP N

USEB CSB CB ASB HAB

Fast-food establishment offering over-the-counter sale of on/off premises prepared food or beverage primarily intended for immediate consumption and prepared in such a manner to be readily eaten from easily disposable containers	SP	SP	N	N	N
Veterinary office and/or treatment facility:					
With boarding of animals	SP	N	N	N	N
Without boarding of animals	SP	SP	SP	SP	SP
Medical clinic	SP	SP	SP	SP	SP
Wholesale distribution facilities or storage in an enclosed structure, excluding the storage of flammable liquids, gas or explosives	SP	N	N	N	SP
Industrial services, for example, machine shop, plumbing electrical or carpentry shop or similar service	SP	N	N	N	SP
Welding shop	N	N	N	N	N
Stone cutting, shaping, or finishing in an enclosed building	N	N	N	N	N
Autobody or auto paint shop, provided that all work is carried out inside the building	N	N	N	N	N
Outside truck service or repair for others including body work	N	N	N	N	N
Food processing primarily for wholesale use	N	N	N	N	N
Bottling plant	N	N	N	N	N
Equipment rental service	Y	N	N	SP	SP
Garment manufacturing	SP	N	N	SP	SP
Laboratory or place where scientific experimental research is conducted not including genetic or biological research laboratory	SP	N	N	SP	SP

<u>USE</u>	<u>B</u>	<u>CSB</u>	<u>CB</u>	<u>ASB</u>	<u>HAB</u>
Genetic biological research	N	N	N	N	SP
Radio or television studio	SP	N	N	SP	SP
Medical reference laboratories other than accessory to a medical office	SP	N	N	SP	SP
Dental prosthesis laboratories other than accessory to a dental office	SP	N	N	SP	SP
Light non-nuisance manufacturing providing that all resulting cinders, dust, flashing, fumes, gases, odors, smoke, noise, vibration, refuse matter, vapor, and heat are effectively confined in a building or are disposed in a manner so as not to create a nuisance or hazard to safety or health	SP	N	N	SP	SP
Any lawful purpose or special use not enumerated elsewhere in this By-law	SP	N	N	N	N
More than one non-residential building or use on a lot where such buildings or uses are not detrimental to each other and are in compliance with all other requirements of this By-law	SP	SP	SP	SP	SP
Use of a room or rooms in a single or two-family dwelling as an office or studio by a resident professional person provided not more than one other person is regularly employed therein in connection with such use and that not more than 25% of the gross floor area, not in excess of 600 sq. ft., is regularly devoted to such use	Y	N	N	Y	Y
Customary home occupation engaged in by a resident of a single or two-family dwelling which may include carpentry, cooking, preserving, dressmaking, handicrafts, repair of small appliances or other small items and					

USEB CSB CB ASB HAB

similar activities, provided that
(1) not more than one person is
regularly employed therein in
connection with such operation,
(2) there is no exterior storage of
material or equipment nor other
exterior evidence of variation from
the regular residential character
of the premises, and (3) there is
no advertising and signing and no
public display or sale of goods on
the premises

Y N N Y Y

The taking of not more than four
non-transient borders or the
leasing of not more than two rooms
with no provisions for private
cooking by a resident family in a
single family dwelling

Y N N Y Y

Cafe or lecture room associated
with a private school

SP N N SP SP

Research laboratory or statistical
office associated with a private
school, including printing,
binding, and electrotyping as
incidental uses

SP N N SP SP

Lunch counter incidental to a
principal use

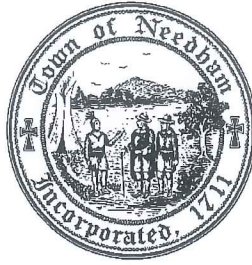
Y SP SP Y Y

Other customary and proper
accessory uses, such as, but not
limited to, garages, tool sheds,
greenhouses and cabanas

Y SP SP Y Y

Other accessory uses incidental to
lawful principal uses

Y SP SP Y Y



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NEEDHAM, MA 02492

2015 DEC -8 AM 11:04

**TOWN OF NEEDHAM
MASSACHUSETTS
BOARD OF APPEALS**

Salib Fanikos Dental Care, LLC

***Record owner: 905 Great Plain Avenue, LLC Mackin Group
905-915 Great Plain Avenue, Map 50, Parcel 30***

November 19, 2015

Salib Fanikos Dental Care, LLC, tenant, applied to the Board of Appeals for a Special Permit under Sections 3.2.2, 7.5.2 and any other applicable Sections of the By-Law to allow more than one non-residential use in order to operate a dental practice on the first floor of a three-unit building. The property is located at 905-915 Great Plain Avenue, Needham, MA in the Center Business District. A public hearing was held on November 19, 2015 pursuant to notice thereof, published in a local newspaper and mailed to all parties of interest.

Documents of Record

- Application Packet dated October 26, 2015 containing:
 1. Application dated October 26, 2015.
 2. Cover letter from Robert T. Smart, Jr., Attorney, dated October 26, 2015.
 3. Authorization Letter from Kenneth L. Mackin dated October 22, 2015.
 4. Letter from Laurice Salib Fanikos, DMD dated October 19, 2015.
 5. Letter from David A. Roche, Building Commissioner dated October 16, 2015.
 6. Certified Plot Plan, prepared by Boston Survey Inc. signed and stamped by George C. Collins RLS No. 41784 dated April 29, 2013.
 7. Floor Plan, Patterson Dental, King Design Associates, Inc. signed and stamped by David Farmer, Registered Architect No. 8333 dated October 19, 2015.
 8. Plan approved by Needham Planning Board dated September 29, 2015.
 9. Letter from Robert T. Smart, Jr. dated October 26, 2015.

10. Planning Board Decision dated July 7, 2015.
- Materials received before the November 19, 2015 hearing:
 11. Letter from Planning Board dated November 17, 2015 with attachments.
 12. E-mail from Dennis Condon, Fire Chief dated November 10, 2015.
 13. E-mail from Tara Gurge, Environmental Health Agent dated November 9, 2015.
 - Materials received at the November 19, 2015 hearing:
 14. Letter from Doggone-it, Inc. dated November 18, 2015.
 15. Letter from SDSS MA studio 2, LLC dated November 18, 2015.

November 19, 2015

The Board members at this hearing are Jon D. Schneider, Chairman; Jonathan D. Tamkin, Member; and Howard S. Goldman, Member. Also participating were Peter Friedenbergl, Associate Member and Kathy Lind Berardi, Associate Member. Mr. Schneider opened the hearing at 8:56 p.m. by reading the public notice.

Mr. Robert T. Smart, Jr., attorney for the applicant, said the Building Commissioner determined that this use was allowed and that no parking waivers or site plan review is needed. The only zoning relief required is a special permit to allow more than one non-residential use on a lot.

Mr. Schneider said that the Planning Board sent extensive comments. The Planning Board does not think the proposed use should be allowed on the first floor. A dental office has consistently been categorized by the Planning Board as an office use since 1989. The Planning Board does not want dental offices taking up retail space on the first floor.

Mr. Smart submitted letters of support from Doggone-it and the Martial Arts Studio, both tenants in the same building.

Mr. Tamkin said for public disclosure that he represented the seller of this building to the current owner. Mr. Smart said he had no problem with Mr. Tamkin's participation.

Mr. Schneider asked if parking would be a concern for the business. Mr. Smart said that there is plenty of street parking on Pickering Street unless there is an activity at Green Field and the hours of operation are usually when the field is not busy. There is plenty of street parking during the day before the restaurants get going. There is also parking across the street behind the First Baptist Church.

Mr. Schneider said that the Planning Director feels strongly that the use is not allowed on the first floor and they never intended for dental or medical uses to take up important retail space.

Mr. Smart said that he did not agree with her interpretation. This use fits squarely in the “Craft, consumer, professional or commercial service establishment dealing directly with the general public and not enumerated elsewhere in this section” as set forth in Section 3.2.2 as an allowed use in the Central Business District. The Building Commissioner concludes that the use is allowed.

Mr. Schneider said dental office is not listed in Section 3.2.2. The Planning Board points out that dental office are listed in the definition of a Medical Services Building. However, that category is not mentioned in the uses for this district.

Mr. Smart thinks this use fits the “professional service establishment serving the general public” because it is not enumerated elsewhere in this section.

Certain office uses are not allowed on the first floor. Mr. Smart said those office uses which do not serve the general public or generate foot traffic such as a back office for a business cannot be on the first floor. The dental use will generate street traffic and will serve the general public. Mr. Schneider suggested this was similar to a tailor who provides a professional service to the general public and there are several tailors on the first floor in the Central Business District.

Mr. Berardi asked why this use is not considered a medical clinic. Mr. Tamkin said that medical clinic has a special license and designation from the state.

Mr. Smart referred to other offices such as optometrist, realtor and investment banker that are on the first floor in the Center Business District. The Board agreed that this use was similar to these other uses.

Mr. Smart reviewed information laid out in his zoning letter submitted with the application. The office space is approximately 1961 square-feet. The proposed hours of operation are Monday through Friday with possible hours on Saturday. They are looking for the broadest hours of operation to give them flexibility. Mr. Smart reviewed the floor plan. There is no exterior work except for sign. Initially there will be the dentist, an assistant, a hygienist, and two receptionists/bookkeepers serving three patients at a time. At full capacity, there would be the dentist, an associate dentist, two hygienists and two receptionists/bookkeepers serving five patients. This use on the first floor provides easy accessibility as most buildings don’t have elevators. They will be following federal, state and local controls for waste disposal.

Dr. Fanikos said that there will be four rooms with chairs and a fifth room will be plumbed-out, but will be used as a lounge until the associate dentist comes on board. She normally uses two chairs and two chairs are used by the hygienist. Dr. Fanikos showed a rendering of the proposed sign.

Mr. Tamkin said that there is a dentist on the first floor of his office building and the blinds are always shut for privacy. He asked how this will look in a retail environment. Mr. Smart said that it will look busy as people will be coming and going. Dr. Fanikos said that they are thinking about using etched glass to allow light through and provide privacy.

Mr. Tamkin said that Mr. Smart presented a compelling argument to rebut the Planning Director's interpretation. Mr. Schneider said the Board is voting to allow a third non-residential use on the property and he sees no conflict with the other uses. If the Board denied this application on the basis of the Planning Board's interpretation, they would be reversing the Building Commissioner's decision.

Mr. Goldman made a motion to allow for a Special Permit under Sections 3.2.2, 7.5.2 Sections of the By-Law to allow more than one non-residential use on a lot in order to operate a dental practice on the first floor of a three-unit building.

Mr. Tamkin seconded the motion and the Board unanimously approved.

The hearing closed at 9:22 p.m.

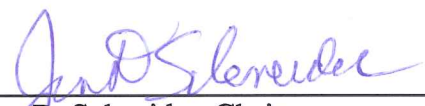
Findings of Facts:

1. The premises to be leased by the Applicant consist of 1961.3 square feet in a 4577.8 square foot, three-unit, one-story building, at 905-915 Great Plain Avenue, in the Center Business District.
2. The Planning Board approved the floor plan for three rental spaces on September 29, 2015.
3. The proposed dental use is allowed by right, as a professional service establishment serving the general public, and not enumerated elsewhere in Section 3.2.2 of the By-Law. The Building Commissioner's October 16, 2015 letter supports this characterization. Any dental waste shall be properly discarded in accordance with the applicable Federal, State and Town guidelines.
4. The Applicant initially seeks to have one dentist, an assistant, a hygienist, and two receptionists/bookkeepers serving three patients at a time. At full capacity, there is projected to be the dentist, an associate dentist, two hygienists and two receptionists/bookkeepers serving five patients.
5. Hours of operation sought by the Applicant are Monday through Saturday; 8:00 a.m. to 7:00 p.m.
6. Neither site plan review under By-Law Section 7.4, nor a special permit to waive parking requirements under By-Law Sections 5.1.2 and 5.1.3, is required. Section 5.1.1.1 of the Zoning By-Law provides that a change of use, which requires additional off-street parking of 9 or fewer spaces in the Center Business District, does not require special permit relief or waivers from Sections 5.1.2 and 5.1.3. In this case, the difference between the parking demand generated by the dental use ($1961.3/200 = 9.81$ spaces) and the underlying retail use ($1961.3/300 = 6.54$) is only 3.27 spaces. The added dental use will not result in a condition that unnecessarily adds to traffic congestion or the potential for traffic accidents at or around the site.

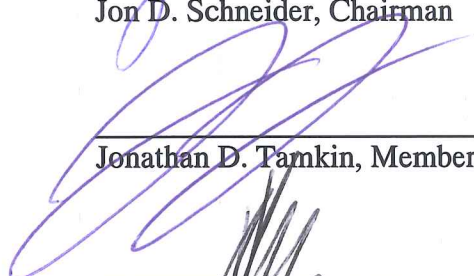
7. The application meets the requirements for the requested special permit relief under By-Law Sections 3.2.2 and 7.5.2.1 in that the proposed use is not detrimental to the other current uses of the building, is compatible with the characteristics of the surrounding area, and will promote the health of the inhabitants of Needham. The other two businesses in the building provided letters supporting the application. The practice will be located close to Green's Field, where youth sporting activities are frequently played with occasional dental injuries occurring. No changes to the exterior of the building, other than signage, are proposed.

Decision

On the basis of the foregoing findings, following due and open deliberation, and by unanimous vote after motion duly made and seconded, the Board grants the Applicant a special permit under Section 3.2.2 and 7.5.2 of the By-Law to allow more than one use including the operation of a dental practice in 1961.3 square feet of leased space at 905-915 Great Plain Avenue.



Jon D. Schneider, Chairman



Jonathan D. Tamkin, Member



Howard S. Goldman, Member

LEGAL NOTICE
Planning Board,
TOWN OF NEEDHAM
NOTICE OF HEARING

In accordance with the provisions of M.G.L., Chapter 40A, S.5, the Needham Planning Board will hold a public hearing on Tuesday, March 16, 2021 at 7:30 p.m. regarding certain proposed amendments to the Needham Zoning By-Law to be considered by the Spring 2021 Annual Town Meeting.

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, Section 18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, this public hearing of the Needham Planning Board is being conducted via remote participation. No in-person attendance of members of the public will be permitted, but the public can view and participate in this meeting while in progress by remote access following the instructions detailed below.

To view and participate in this virtual hearing 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: 878-8270-9890

To view and participate in this virtual hearing on your computer, at the above date and time, go to www.zoom.us click "Join a Meeting" and enter the following ID: 878-8270-9890

Members of the public attending this meeting virtually will be allowed to make comments if they wish to do so, during the portion of the hearing designated for public comment through the zoom app.

Persons interested are encouraged to call the Planning Board office (781-455-7550) for more information. A copy of the complete text of the proposed article is detailed below. The article designation given has been assigned by the Planning Board for identification purposes only. An article number will subsequently be established by the Select Board for the Warrant.

ARTICLE 1: AMEND ZONING BY-LAW – HIGHWAY COMMERCIAL 1 ZONING DISTRICT

To see if the Town will vote to amend the Needham Zoning By-Law as follows:

1. Amend Section 2.1, Classes of Districts, by adding the following term and abbreviation under the subsection Industrial:

"HC-1 -- Highway Commercial 1"

2. Amend Section 3.2, Schedule of Use Regulations, by adding a new Section 3.2.7 as follows:

"3.2.7 Uses in the Highway Commercial 1 District

3.2.7.1 Permitted Uses

The following uses are permitted within the Highway Commercial 1 District as a matter of right:

- (a) Uses exempt from local zoning control pursuant to M.G.L. Chapter 40A, Section 3.
- (b) Public parks and playgrounds, municipal buildings or uses.
- (c) Retail establishment (not including grocery stores) or combination of retail establishments serving the general public where each establishment contains less than 5,750 square feet of floor area and where all items for sale or rent are kept inside a building.
- (d) Manufacturing clearly incidental and accessory to a retail use on the same premises and the product is customarily sold on the premises.
- (e) Craft, consumer or commercial service establishment dealing directly with the general public.
- (f) Laundry or dry cleaning pick-up station with processing done elsewhere.
- (g) Professional, business or administrative office, but not including any of the following: a medical clinic or Medical Services Building or medical, surgical, psychiatric, dental, orthodontic, or psychologist group practices comprised of three or more such professionals (hereinafter "Group Practices") or physical therapy, alternative medicine practices, wellness treatments, including but not limited to, acupuncture, yoga, chiropractic and/or nutrition services. "Professional" shall include professional medical, surgical, psychiatric, dental, orthodontic or psychologist practice by a group of two or fewer such professionals ("Non-group Practice").
- (h) Bank or Credit Union.
- (i) Medical Laboratory or laboratory engaged in scientific research and development and/or experimental and testing activities including, but not limited to, the fields of biology, genetics, chemistry, electronics, engineering, geology, medicine and physics, which may include the development of mock-ups and prototypes.
- (j) Radio or television studio.
- (k) Light non-nuisance manufacturing, including, but not limited to, the manufacture of electronics, pharmaceutical, bio-pharmaceutical, medical, robotic, and micro-biotic products, provided that all resulting cinders, dust, flashing, fuses, gases, odors, smoke, noise, vibration, refuse matter, vapor, and heat are effectively confined in a building or are disposed of in a manner so as not to create a nuisance or hazard to safety or health.
- (l) Telecommunications facility housed within a building.
- (m) Other customary and proper accessory uses incidental to lawful principal uses. Further provided, accessory uses for seasonal temporary outdoor seating for restaurants serving meals for consumption on the premises and at tables with service provided by waitress or waiter shall be allowed upon minor project site plan review with waiver of all requirements of Section 7.4.4 and 7.4.6 except as are necessary to demonstrate compliance with Section 6.9 by the Planning Board or Select Board in accordance with Section 6.9.
- (n) More than one building on a lot.
- (o) More than one use on a lot.

3.2.7.2 Uses Permitted By Special Permit

The following uses are permitted within the Highway Commercial 1 District upon the issuance of a Special Permit by the Special Permit Granting Authority under such conditions as it may require:

(a) Light-rail train station.

(b) Adult day care facility.

(c) Private school, nursery, or kindergarten not otherwise classified under Section 3.2.7.1 (a).

(d) Retail establishment (not including grocery stores) or combination of retail establishments serving the general public where any establishment contains more than 5,750 but less than 10,000 square feet of floor area and where all items for sale or rent are kept inside a building.

(e) Equipment rental service but not including any business that uses outside storage.

(f) Grocery store provided it does not exceed 10,000 sq. ft. of floor area.

(g) Eat-in or take-out restaurant or other eating establishment except that a lunch counter incidental to a primary use shall be permissible by right.

(h) Veterinary office and/or treatment facility and/or animal care facility, including but not limited to, the care, training, sitting and/or boarding of animals.

(i) Indoor athletic or exercise facility or personal fitness service establishment, which may include outdoor pool(s) associated with such facilities.

(j) External automatic teller machine, drive-up window or auto-oriented branch bank accessory to a bank or credit union permitted under Section 3.2.7.1(h) hereof.

(k) Group Practices as defined in Section 3.2.7.1(g) and alternative medicine practices, physical therapy, and wellness treatments facilities including, but not limited to, acupuncture, yoga, chiropractic and/or nutrition services. Such uses may have customary and proper accessory uses incidental to the lawful principal uses, including but not limited to, pharmacies.

(l) Live performance theater, bowling alley, skating rink, billiard room, and similar commercial amusement or entertainment places.”

3. Amend Section 4.7.1, Specific Front Setbacks, by deleting the following provisions:

“(b) On the easterly side of Gould Street from Highland Avenue northerly to land of the New York, New Haven and Hartford Railroad Company, there shall be a fifty (50) foot building setback line;

(c) On the northerly side of Highland Avenue from Gould Street northeasterly to the property of the Commonwealth of Massachusetts, there shall be a fifty (50) foot building setback line.”

4. Amend Section 4, Dimensional Regulations, by adding a new Section 4.11 Dimensional Regulations for Highway Commercial Districts as follows:

“4.11 Dimensional Regulations for Highway Commercial Districts

4.11.1 Highway Commercial 1

Minimum Lot Area (Sq. Ft.)	Minimum Lot Frontage (Ft.)	Front Setback (Ft.)	Side Setback (Ft.)	Rear Setback (Ft.)	Maximum Height (Ft.)	Maximum Stories	Maximum Lot Coverage	Floor Area Ratio
		(1)	(1) (3)	(1) (3)	(1)	(1)	(2) (4)	(5) (6)
20,000	100	5	10	10	56	4	65%	1.00

(1) a. All buildings shall be limited to a height of 56 feet and four stories, except that buildings within 200 feet of Highland Avenue or the extension of the right-of-way line as described below in paragraph c. and buildings within 200 feet of Gould Street shall be limited to a height of 35 feet and 2 ½ stories as-of-right. If the height of a building is increased above the height of 35 feet, the front setback shall be increased to 15 feet and the side and rear setbacks to 20 feet except that, along the MBTA right-of-way the side and rear yard setbacks shall be 10 feet.

b. By Special Permit from the Planning Board, the maximum height of a building may be increased to the following limits within 200 feet of Highland Avenue or the extension of the right-of-way line as described below in paragraph c. and within 200 feet of Gould Street: 3 stories and 42 feet or 3 stories and 48 feet, provided the additional height is contained under a pitched roof or recessed from the face of the building in a manner approved by the Planning Board. By Special Permit from the Board, the maximum height of a building may be further increased to the following limits: 5 stories and 70 feet provided the building is not located within 200 feet of Highland Avenue or the extension of the right-of-way line as described below in paragraph c. or within 200 feet of Gould Street. If the height of a building is increased above the height of 42 feet, or 48 feet if under a pitched roof or recessed as aforesaid, the front setback shall be increased to 15 feet and the side and rear setbacks to 20 feet except that, along the MBTA right-of-way the side and rear yard setbacks shall be 10 feet.

c. The line from which the setbacks from Highland Avenue shall be measured is that line which starts at the point of curvature on Highland Avenue at Gould Street marked by a stone bound/drill hole (SB/DH) and runs northeasterly N63°56'51"E by the Highland Avenue 1980 State Highway Alteration 361.46 feet to a stone bond/drill hole, then continues on the same northeasterly course an additional 330.54 feet for a total distance from the first mentioned bound of 700 feet. Reference is made to a plan entitled "Plan of Land Gould Street, Needham, MA", prepared by Andover Engineering, Inc., dated July 27, 2000, last revised September 20, 2001, recorded in the Norfolk County Registry of Deeds as Plan No. 564 of 2001, Plan Book 489.

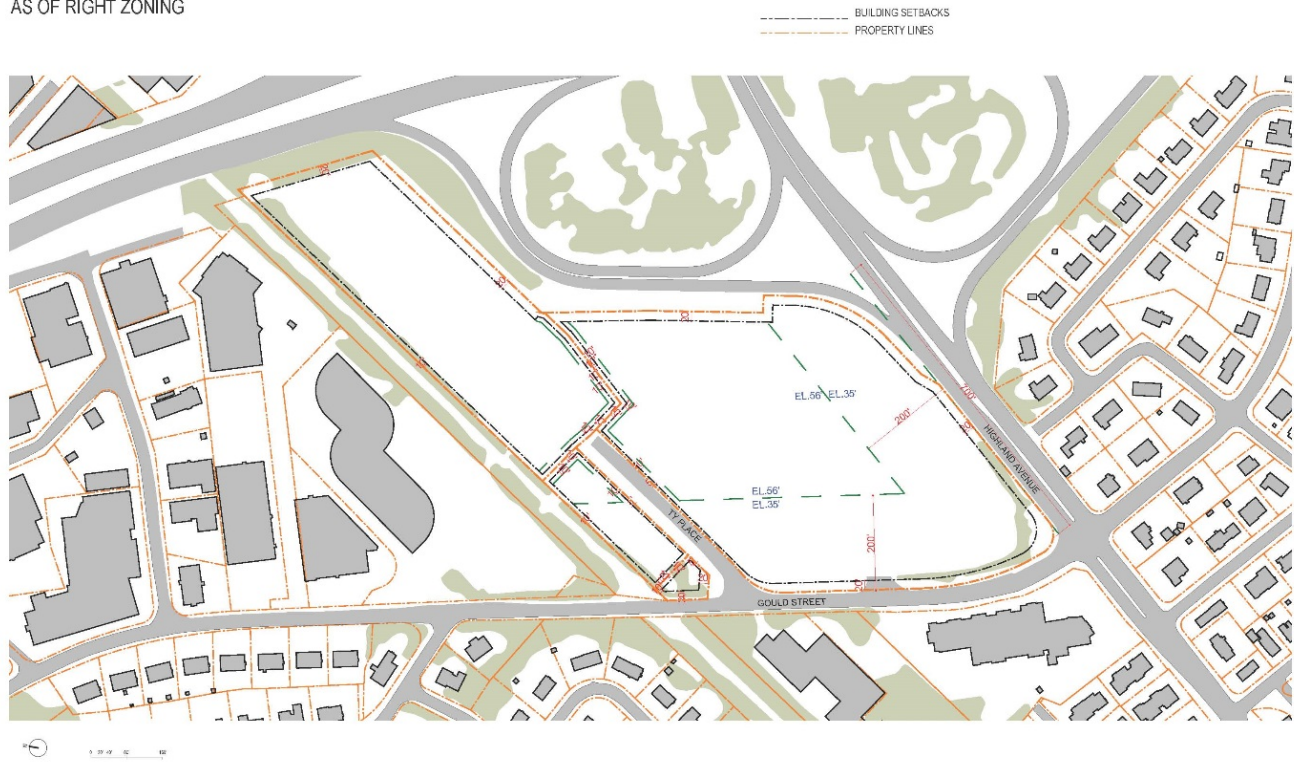
d. Buildings and structures abutting Highland Avenue, Gould Street and/or the layout of Route 128/95 shall be set back at least 20 feet from said streets and said layout. Notwithstanding the location of any building and structures, a 20 foot landscaped, vegetative buffer area shall be required along the aforementioned street frontages and said layout in order to screen the development. Driveway openings, sidewalks, walkways and screened mechanical equipment shall be permitted in the buffer area.

e. Structures erected on a building and not used for human occupancy, such as chimneys, heating-ventilating or air conditioning equipment, solar or photovoltaic panels, elevator housings, skylights, cupolas, spires and the like may exceed the maximum building height provided that no part of such structure shall project more than 15 feet above the maximum allowable building height, the total horizontal coverage of all of such structures on the building does not exceed 25 percent, and all of such structures are set back from the roof edge by a distance no less than their height. The Planning Board may require screening for such structures as it deems necessary. Notwithstanding the above height limitations, cornices and parapets may exceed the maximum building height provided they do not extend more than 5 feet above the highest point of the roof.

f. For purposes of clarity, the required building setbacks and allowed envelopes (including setbacks) for allowance of additional height above 35' for the as-of right circumstance and 42'/48' for the special permit circumstance are shown on figures 1 and 2 below.

Figure 1:

AS OF RIGHT ZONING

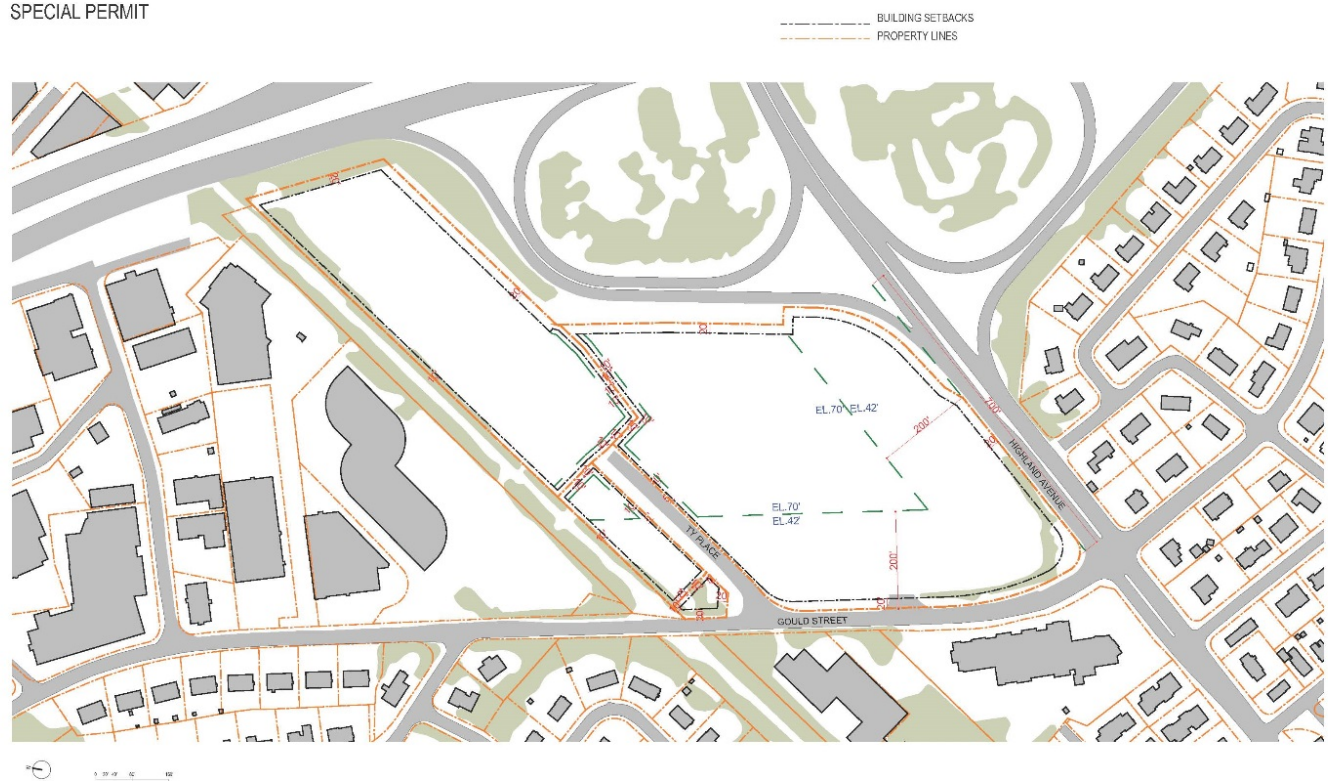


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HIGHWAY COMMERCIAL 1 ZONING DISTRICT PLANNING
FEBRUARY 03 2021

Figure 2:

SPECIAL PERMIT



STUDIO ENÉE architects

HIGHWAY COMMERCIAL 1 ZONING DISTRICT PLANNING
FEBRUARY 03 2021

- (2) Maximum lot coverage shall be 65% for all projects. However, if a project is designed such that at least 65% of the required landscaped area immediately abuts at least 65% of the required landscaped area of an adjoining project for a distance of at least 50 feet, the maximum lot coverage may be increased to 75%.
- (3) No side or rear yard setback is required for shared parking structures between adjoining properties, but only on one side of each lot, leaving the other side or rear yards open to provide access to the interior of the lot.
- (4) A minimum of 20% of total lot area must be open space. The open space area shall be landscaped and may not be covered with buildings or structures of any kind, access streets, ways, parking areas, driveways, aisles, walkways, or other constructed approaches or service areas. Notwithstanding the preceding sentence, open space shall include pervious surfaces used for walkways and patios. (Pervious surfaces shall not preclude porous pavement, porous concrete, and/or other permeable pavers.)
- (5) A floor area ratio of up to 1.35 may be allowed by a special permit from the Planning Board. In granting such special permit, the Planning Board shall consider the following factors: the ability of the existing or proposed infrastructure to adequately service the proposed facility without negatively impacting existing uses or infrastructure, including but not limited to, water supply, drainage, sewage, natural gas, and electric services; impact on traffic conditions at the site, on adjacent streets, and in nearby neighborhoods, including, but not limited to, the adequacy of the roads and intersections to safely and effectively provide access and egress; the environmental impacts of the proposal; and the fiscal implications of the proposal to the Town. In granting a special permit, the Planning Board shall also consider any proposed mitigation measures and whether the proposed project's benefits to the Town outweigh the costs and adverse impacts, if any, to the Town.
- (6) The calculation of floor area in determining floor area ratio shall not include parking areas or structures.

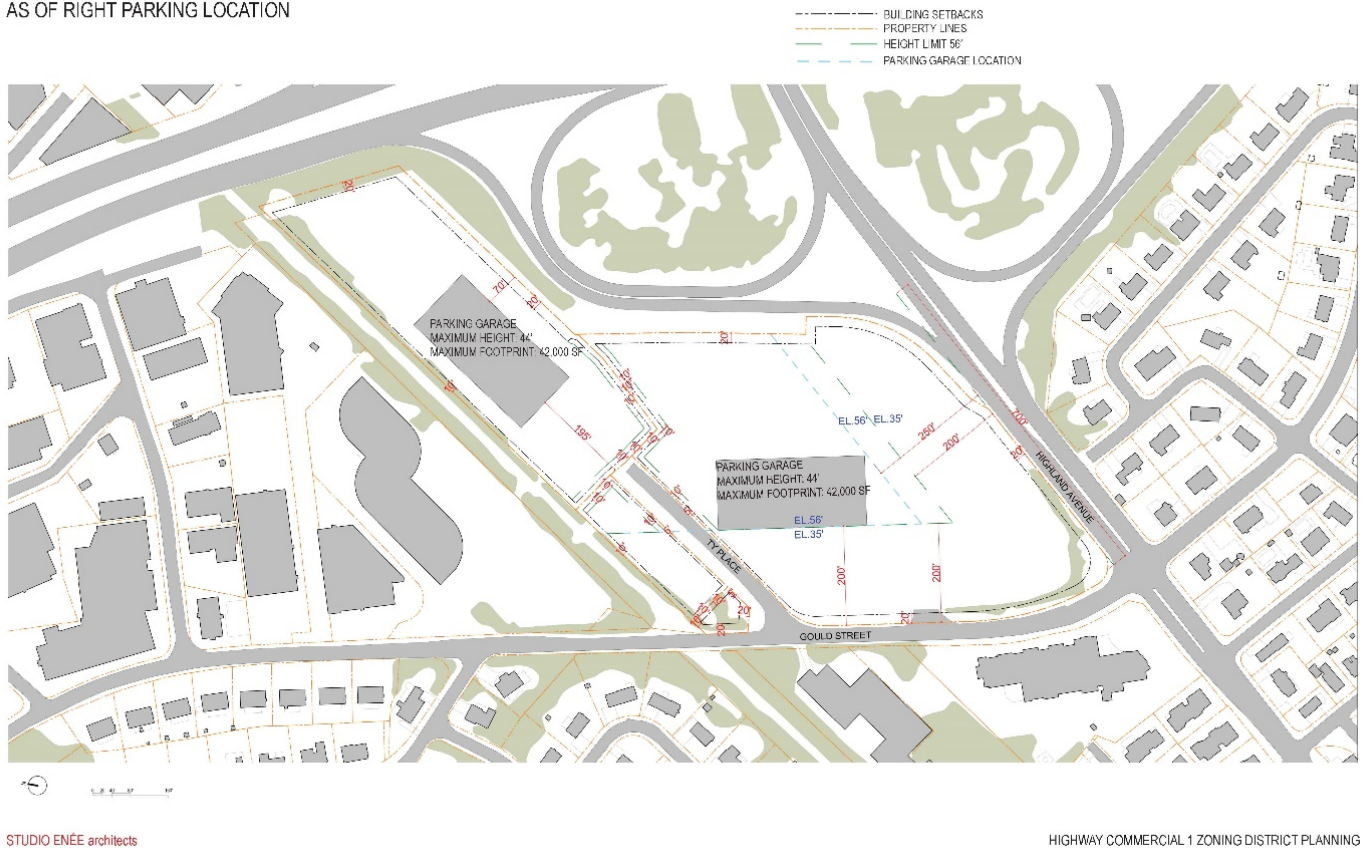
4.11.2 Supplemental Dimensional Regulations

- (1) Parking structures shall be set back at least 100 feet from Highland Avenue and/or Gould Street.
- (2) Parking structures may have an active ground floor use, such as retail, office, institutional, or display. Structured parking must be located at least 20 feet from adjacent buildings, but may be attached to the building it is servicing if all fire and safety requirements are met.
- (3) Buildings abutting Highland Avenue and/or Gould Street must have a public entrance facing one street on which the building fronts. This requirement may be waived by special permit from the Planning Board for buildings abutting the 20-foot landscaped setback on Gould Street and Highland Avenue where the arrangements for pedestrian access are such that entrances facing these streets are not the best design option.
- (4) Maximum uninterrupted facade length shall be 200 feet.
- (5) Notwithstanding Section 3.2.7.1(m) and any other provision of this Section 4.11 to the contrary, a parking garage, even if it is for an as-of-right development, may not exceed 44 feet in height, may not have a building footprint in excess of 42,000 square feet and may not be located within 250 feet of Highland Avenue or the extension of the right-of-way line described in Section 4.11.1 (1) (c) or within 200 feet of Gould Street without the issuance of a special permit by the Planning Board. A parking garage for an as-of-right development may, however, be located within the area

beyond said setbacks as-of-right if the parking garage is located easterly or northeasterly of said 200-foot or 250-foot setbacks. For purposes of clarity the height, coverage and location requirements for the as-of-right circumstance are shown on figure 3 below.

Figure 3

AS OF RIGHT PARKING LOCATION



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HIGHWAY COMMERCIAL 1 ZONING DISTRICT PLANNING
FEBRUARY 03 2021

- (6) All setback, height, and bulk requirements applicable to this Section 4.11 are contained in this Section and no additional requirements occasioned by this district abutting Route 128/95's SRB district shall apply.

4.11.3 Special Permit Provision

The Planning Board may, by special permit, waive any or all dimensional requirements set forth above in this Section 4.11 (including sections 4.11.1 and 4.11.2), by relaxing each by up to a maximum percentage of 25% if it finds that, given the particular location and/or configuration of a project in relation to the surrounding neighborhood, such waivers are consistent with the public good, and that to grant such waiver(s) does not substantially derogate from the intent and purposes of the By-Law. This section does not authorize the Planning Board to waive the maximum height regulations, maximum story regulations, reduce the 20 foot landscaped buffer area requirement along Gould Street, Highland Avenue and the layout of Route 128/95, reduce the 100 foot garage setback requirement along Gould Street and Highland Avenue, or reduce the 20% open space requirement of Section 4.11.1(4), except as specifically provided in Section 4.11.1(1) for pitched or recessed roofs. (By way of example, a 15' front yard setback could be waived to 11.25' or the 20,000 sq. ft. minimum lot area could be waived to 15,000 sq. ft.)

4.11.4 Special Permit Requirements

In approving any special permit under this Section 4.11, the Planning Board shall consider the following design guidelines for development: (a) The proposed development should provide or contribute to providing pedestrian and neighborhood connections to surrounding properties, e.g., by creating inviting buildings or street edge, by creating shared publicly accessible green spaces, and/or by any other methods deemed appropriate by the Planning Board; (b) Any parking structure should have a scale, finish and architectural design that is compatible with the new buildings and which blunts the impact of such structures on the site and on the neighborhood; (c) The proposed development should encourage creative design and mix of uses which create an appropriate aesthetic for this gateway to Needham, including but not limited to, possible use of multiple buildings to enhance the corner of Highland Avenue and Gould Street, possible development of a landscape feature or park on Gould Street or Highland Avenue, varied façade treatments, streetscape design, integrated physical design, and/or other elements deemed appropriate by the Planning Board; (d) The proposed development should promote site features and a layout which is conducive to the uses proposed; (e) the proposed development should incorporate as many green building standards as practical, given the type of building and proposed uses; and (f) The proposed development shall include participation in a transportation demand management program to be approved by the Planning Board as a traffic mitigation measure, including but not limited to, membership and participation in an integrated or coordinated shuttle program.”

5. Amend Section 5.1.3, Parking Plan and Design Requirements, by adding at the end of the second sentence of subsection (j) which reads “Such parking setback shall also be twenty (20) feet in an Industrial-1 District” the words “and Highway Commercial 1 District.”
6. Amend Section 7.2.5 of Section 7.2 Building or Use Permit, by adding after the words “Industrial-1 District,” in the first sentence, the words “Highway Commercial 1 District,”.
7. Amend Section 7.4.2 of Section 7.4 Site Plan Review, by adding in the first sentence of the last paragraph, the words “Highway Commercial 1 District,” after the words “Highland Commercial-128,”.
8. Amend Section 7.7.2.2, Authority and Specific Powers (of Design Review Board) by adding after the words “Industrial-1 District,” in the first sentence of the second paragraph, the words “Highway Commercial 1 District,”.

ARTICLE 2: AMEND ZONING BY-LAW – HIGHWAY COMMERCIAL 1 ZONING DISTRICT SCHEDULE OF PERMITTED SPECIAL PERMIT USES

To see if the Town will vote to amend the Needham Zoning By-Law as follows:

1. Amend Section 3.2.7 Uses in the Highway Commercial 1 District, Subsection 3.2.7.2 Uses Permitted By Special Permit, by adding a new paragraph (m) to read as follows:

“(m) Apartment or multi-family dwelling provided that (1) the proposed apartment or multi-family dwelling complies with the lot area per unit requirements for apartments in the A-1 district as detailed in Section 4.3, (2) no more than 240 dwelling units shall be permitted in the Highway Commercial 1 District, (3) at least 40% but not more than 70% of all dwelling units within any project shall be one-bedroom units, and (4) at least 12.5% of all dwelling units shall be Affordable Units as defined in Section 6.12.”

2. Amend Section 6.12, Affordable Housing, by revising the first paragraph to read as follows:

“Any mixed-use building in the Neighborhood Business District (NB) with six or more dwelling units shall include affordable housing units as defined in Section 1.3 of this By-law. Any building in the Highway Commercial 1 District with six or more dwelling units shall include affordable housing units

as defined in Section 1.3 of this By-law. The requirements detailed in paragraphs (a) thru (i) below shall apply to a development that includes affordable units in the Neighborhood Business District. The requirements detailed in paragraphs (a), (c), (d), (e), (f), (g), and (h) below shall apply to a development that includes affordable units in the Highway Commercial 1 District.”

ARTICLE 3: AMEND ZONING BY-LAW – MAP CHANGE TO HIGHWAY COMMERCIAL 1

To see if the Town will vote to amend the Needham Zoning By-Law by amending the Zoning Map as follows:

Place in the Highway Commercial 1 District all that land now zoned Industrial-1 and lying between the Circumferential Highway, known as Route 128/95 and Gould Street and between the Massachusetts Bay Transit Authority (M.B.T.A.) right-of-way and Highland Avenue. Said land is bounded and described as follows:

Beginning at a stone bound on the northerly layout line of Highland Avenue at the intersection of Gould Street as shown on a plan recorded at the Norfolk County Registry of Deeds, Plan No. 564 of 2001, Plan Book 489; thence turning and running southwesterly, westerly and northwesterly along a radius of 44.00 feet a distance of 80.06 feet to a stone bound on the easterly sideline of Gould Street; thence running northwesterly, northerly, and northeasterly along a curve of radius of 505.00 feet of said sideline of Gould Street a distance of 254.17 feet to a point on the said easterly sideline of Gould Street; thence running N10°49’50”E a distance of 284.29 feet to a point on the said easterly sideline of Gould Street at the intersection of TV Place, a privately owned Right of Way; thence continuing N10°49’50”E a distance of 160.00 feet more or less to a stone bound as shown on a plan recorded at the Norfolk County Registry of Deeds Land Court Case No. 18430I; thence continuing N10°49’50”E a distance of 84.82 feet to a stone bound located at the intersection of the easterly sideline of Gould Street and the southerly sideline of the M.B.T.A. Right of Way as shown on a plan recorded at the Norfolk County Registry of Deeds Land Court Case No. 18430I; thence turning and running along said southerly M.B.T.A. Right of Way line northeasterly a distance of 1,219.55 feet as shown on a plan recorded at the Norfolk County Registry of Deeds Land Court Case No. 18430I, 18430J and 18430H to a point at the intersection of the westerly sideline of the Route 128 Right of Way and said southerly sideline of the M.B.T.A. Right of Way; thence turning and running S4°25’46”E a distance of 292.00 feet to a stone bound as shown on a plan recorded at the Norfolk County Registry of Deeds Land Court Case No. 18430H; then turning and running southwesterly along the Route 128 Right of Way a distance of 484.61 feet to a point; thence turning and running S13°34’58”W a distance of 451.02 feet as shown on a plan recorded at the Norfolk County Registry of Deeds, Plan No. 564 of 2001, Plan Book 489 to a point; thence turning and running S76°26’41”E a distance of 35.56 feet to a point; thence turning and running S13°34’58”W a distance of 67.34 feet to a point; thence running southwesterly along a curve of radius 245.45 feet a distance of 136.59 feet to a point; thence running southwesterly along a curve of radius 248.02 feet a distance of 38.04 feet to a point; thence running southwesterly along a curve of radius 1180.00 feet a distance of 140.09 feet to a point; thence turning and running S42°43’47”W a distance of 42.52 feet to a stone bound located in the westerly sideline of the Route 128 Right of Way; thence turning and running S63°56’51”W a distance of 361.46 feet to the point of beginning.

Interested persons are encouraged to attend the public hearing and make their views known to the Planning Board. This legal notice is also posted on the Massachusetts Newspaper Publishers Association’s (MNPA) website at (<http://masspublicnotices.org/>).

Needham Times, February 25, 2021 and March 4, 2021.

NEEDHAM PLANNING BOARD MINUTES

February 3, 2021

The Needham Planning Board Town Wide Community Planning Virtual Meeting using Zoom was remotely called to order by Jeanne McKnight, Chairman, on Wednesday, February 3, 2021, at 7:15 p.m. with Messrs. Jacobs, Owens and Block, as well as Planning Director, Ms. Newman and Assistant Planner, Ms. Clee. Also in attendance was Select Board member Marianne Cooley, Natasha Espada of Studio Enee Architects and Rebecca Brown of Greenman Pederson Inc. (GPI).

Ms. McKnight took a roll call attendance of people expected to be on the agenda. She noted this is an open meeting that is being held remotely because of Governor Baker's executive order on March 12, 2020 due to the COVID Virus. All attendees are present by video conference. She reviewed the rules of conduct for zoom meetings. She noted this meeting encourages public participation and public comment. If any votes are taken at the meeting the vote will be conducted by roll call. She stated Planning Board member Adam Block will facilitate the presentation and moderate comments and questions.

Mr. Block noted the Planning Board reviewed the ~~area under consideration proposal for the Highway Commercial 2 District~~. This is a 15-acre area with the Muzi parcel being 9.4 acres and the Channel 5 parcel being 5.8 acres. The site is bounded by 128 to the east, Highland Avenue to the south, Gould Street on the west and the MBTA right of way on the north. Natasha Espada of Studio Enee gave an overview of the site and surrounding area. Across the highway is the industrial area with bigger buildings. There are residential neighborhoods interspersed, but there is a clear spine that begins in Newton and goes through to the center of ~~the~~ Town. They ~~design team~~ looked at public transportation and she showed the train line and bus lines locations. She noted they need to think about how to get public transportation to this area. She showed the spine which has civic, retail and office. She noted there is a clear edge of density on the spine which is defined in 2 and 3 story buildings.

Mr. Block stated various committees have looked at the proposed Highway Commercial 1 area as an underutilized district. They want to unlock a higher and better use of these parcels along this corridor that makes a stronger contribution to the Town while respecting it ~~has~~ abuts residential neighborhoods nearby. ~~This~~ Rezoning was initially proposed at the October 2019 Town Meeting and did not pass. He noted the Needham Heights Neighborhood Association had a community meeting after that and got constructive feedback. The constructive feedback received focused on 3 critical elements of the 2019 proposal: an option for multi-family residential development; to reduce the scope and scale of development; and to reduce the maximum building heights. The presentation will review the initial and current proposals and show what has changed.

Upon a motion made by Mr. Block, and seconded by Mr. Owens, it was by a roll call vote of the four members present unanimously:

VOTED: to automatically continue the meeting to 2/10/21 at 7:15 p.m. with the same zoom ID number if any technical difficulties arise that keep the Planning Board from continuing this meeting tonight.

Mr. Block reviewed the table of uses for Highway Commercial 1 and what ~~is~~ would be allowed by right or by special permit. He explained uses by right and uses by special permit. He showed uses allowed under the existing By-Law, the 2019 proposal and the 2021 proposal, noting current uses that would be discontinued ~~uses~~, uses new in 2019 and uses new in 2021. He stated this includes an option for multi-family after feedback that was received. The housing is limited to 240 units where a minimum of 40% and a maximum of 70% must be 1-bedroom units and 12 1/2% must be affordable. He reviewed the dimensional requirements. In the 2019 proposal the maximum density, or FAR, was 1.75. The 2021 propose ~~al~~ ed reduces ~~ed~~ it to 1.35, or by 25%, based on feedback. The 2019 height was 70 feet by right and 84 feet by special permit. The maximum height has been reduced to 56 feet by right and 70 feet by special permit. The maximum height has also been pushed back 200 feet from Gould Street and Highland Avenue.

Ms. Espada showed the current site. She noted Site 1, which is where Channel 5 is, has a 3-story building toward the rear of the site and a one-story building by Gould Street. There is also a 2-story building at the Muzi Ford site and a one-story building. She noted she is going to ~~showlook at~~ As of Right Zoning with an FAR of 1.0 with a single building and multiple buildings. She will also ~~showlook at~~ Special Permit Zoning with an FAR of 1.35 with a single building and multiple buildings. She clarified there are no buildings designed. They are just showing what would be allowableed. She noted ancillary retail would service the occupants of the buildings and would not be destination shopping.

Ms. Espada stated the entrance to the site would remain the same. She showed the current views from Gould Street and Highland Avenue and renderings of what it could look like. She also showed views from Route 128 and the 128 exit. She showed total building square footage for corporate headquarters at 30%, research and development at 30%, retail at 10.5% and residential at 29.5%. She showed renderings with 2 stories in front and 4 stories in back and noted the front buildings are in proportion with other buildings in the area. Special permit zoning allows increases in the FAR. With the single building option there could be 5 stories, 700 feet in height, 200 feet back, and 42 feet height within the 200 feet ~~and 70 feet in back~~. The 5-story building would be right nearoff the highway. In the Mixed-Use option there is a 3-story edge around the site that mimics what is on the spine alongaround Highland Avenue.

Rebecca Brown, of GPI, spoke from the traffic perspective. She looked at the site and estimated the maximum potential traffic with a full build out of the site at a 1.35 FAR. She also assessed ~~whetherif~~ reasonable mitigations can be done. She noted the study area included the intersections along Central Street at Gould Street and Hampton Avenue and River Park Street and along Gould at Ellis Street and, Kearney Road, the 2 current drives to Muzi and Channel 5 and the Highland/Hunting/Gould intersection. Information was collected in 2015, and she was able to utilize those traffic counts. I-95 was being widened at the time. In February 2019, supplemental data was collected as post construction to compare.

Ms. Brown noted the Gould and Central intersection supplemental data was collected by the ~~the~~ Town. The 2019 counts are about 13 to 15% lower than the 2015 data collected. She used the updated information and used the 2015 information for a worst-case scenario. She reviewed existing trips and proposed trips for the worst case scenario of 1.35 FAR. She compared the existing site uses and the proposed site uses. There is an increase of approximately 8,900 ~~westerly-weekday~~ daily trips per day. She looked at the existing traffic patterns in the area, journey to work model and place of residency. She also looked at what the building density looked like around the site.

Ms. Brown reviewed the projected level of service in the area for 2030 without mitigation and noted most intersections passed. She stated there were 4 intersections that did not pass. Central and Gould is already being looked at by the ~~the~~ Town, and ~~the~~ Town is looking at installation of traffic signals and improvements. The 2 site drives were a level of service F and also the intersection of Highland and Gould. The intent is to estimate how much traffic would be generated and how to mitigate. She showed a concept plan. She looked at the site drives, which would require a traffic signal at one of the 2 locations. She feels it would be the southerly drive. The northerly drive would not need a signal. This is the potential layout of the site. Both drives would warrant a left turn lane and right turn lanes. There would need to be 2 right turns out of the drive at the signaled drive.

Gould Street would need to be widened to allow for 4 lanes; there would be 2 left turns lanes onto Highland Avenue, a dedicated through lane and a dedicated right on Highland to the west. Highland would need a right lane onto Gould. Widening would be done toward the site along Gould and Highland. A land taking would be required from the front of the site. The level of service could be brought back to a no-build condition and the site drives would operate at a Level D or better. A mitigation packet could be done to bring back to a no-build condition.

Select Board member Marianne Cooley spoke of the fiscal impacts. She stated until there is a proposal this is all hypothetical. This just creates the potential for new possibilities and unlocks a revenue opportunity for the ~~the~~ Town. She noted this was discussed 2 years ago and the possibility of warehouse use was discussed then. They did not think a warehouse would be 24/7 then but is more likely now with the pandemic. She has no updated fiscal impact

study ~~yet~~, so they looked at the 2019 information. There would be additional costs for the ~~€~~Town with residential. The ~~€~~Town benefits from the commercial base to share the tax burden. The ~~€~~Town could anticipate upward of \$4,000,000 in revenue. The Planning Board would work with the developer to limit the impact of the development. She commented she looks forward to questions and feedback.

Mr. Block ~~said that~~outlined the Planning Board's new proposal ~~responds to~~includes constructive criticisms heard over the last 15 months. He recapped the traffic mitigations that are possible.

Keith LaFace, of 504 Chestnut Street and Town Meeting Member Precinct E, stated he supports the zoning change. He owned a home on Central at Gould. This area lacked places to walk to such as restaurants. He feels reasonable mitigation should be implemented before the ground breaks. It is a thoughtful proposal.

Lee Truong, of 109 Evelyn Road, asked what the consideration was for the determination of an FAR of 1.35 versus a 1.0 FAR. She feels the traffic will be awful. Mr. Block stated the Board is setting parameters for development. It would be up to the developer on how they would like to proceed within those parameters. It is less expensive to develop a by-right proposal. A larger project takes longer and has government oversight and public hearings. No one knows what a developer would bring forward. Ms. Troung asked what Research and Development implies. Mr. Block stated there are allowed uses by right or by special permit. It is up to the developer to determine what they would like to do. Types of Research and Development could be life sciences or medical labs, or it could be research and engineering or computer high tech. The Board would let the developer see what they are able to put together.

Barry Pollack, of 15 Pandolf Lane and Town Meeting Member Precinct J, stated some concerns have been addressed and he appreciates the numbers are lower. He asked if the height is measured from the Highland Avenue height of natural land as it sits now. Ms. Newman noted it is measured from the grade around the building. Mr. Block stated the Board is trying to encourage greater height be pushed to the back of the site. Mr. Pollack stated he would like to see part of the property as a recreational facility like Wellesley has. He noted 56 feet is too high for part of this site but not bad by the highway. He asked who would be best to contact on the Planning Board with feedback regarding heights. Mr. Block encouraged all to submit comments or questions in writing ~~theto~~ planning@needhamma.gov. Mr. Pollack noted land takings was mentioned and asked where that would be. Mr. Block clarified that was speculative at this point. It may be a function of improving traffic at Highland and Gould. The developer would ~~offer~~use their own land for the taking.

Masha Sherman, of 166 Noanett Road, stated she supports restaurants and places people could go hang. There is nothing in this area. She asked if the Board discussed the impact of the construction on the value of existing houses. Mr. Block appreciates that. In terms of property values, he is a local realtor. He feels the proximity to retail and restaurants would add a level of convenience that would increase property values as homes would be considered more desirable. It has an uplifting effect on the surrounding community. He noted it is hard to know the effect on housing prices in the vicinity.

Monte Krieger, of 33 Woodbine Circle, stated he is confused by the traffic numbers. It seems the numbers were only based on commercial and not residential. One thought is including residential housing here. Was that included in the traffic counts? Ms. Brown stated she did not look at the residential component originally. She did look at it and found a reduction in traffic if commercial was replaced with residential. She was asked to ~~present~~do a worst-case scenario though. Mr. Krieger asked if the counts were based on one car per unit. Ms. Brown noted there would be multi-bed~~room~~ units. She accounted for a range of cars that people may have. Mr. Krieger noted the Highland to Hunting turn ~~is~~would be worse than current. Ms. Brown stated it ~~is~~could be a little worse than the current level of service E. A different timing plan could improve it.

Gerry Rovner, of 48 Cynthia Road and Town Meeting Member Precinct B, asked what the dates of the traffic study were and if it was pre Covid. He also asked how far back up Central Avenue was studied. He stated there are 3 schools on Central Avenue. Ms. Brown stated they studied Central from Gould Street to the River Park Street intersection and all of Gould Street. She noted all the traffic counts were done pre Covid in February 2019. She

compared the 2015 data to the 2019 data. The 2015 data was higher, so she did include some of those numbers for a worst-case scenario. Mr. Rovner asked the dates of the studies. Ms. Brown noted all different dates in 2015 from June and December. In 2019 the data was collected in February at Gould and Central and Gould and Highland. Mr. Rovner asked if any study was done on the impact of the light at Central and Chestnut in Newton. It is a major choke point. Ms. Brown responded that ~~the~~ this intersection was not studied. Mr. Rovner asked if there was any intent of the current owners to vacate this property. Mr. Block stated he had no idea and is not aware of any plans they may have.

John Kapellas, of 125 Evelyn Road, appreciates all the information and work done. He noted Mr. Block said they are looking for something with a stronger contribution to the Town and asked what that means. Mr. Block noted a financial contribution to the ~~the~~ Town and stronger aesthetics and amenities to the ~~the~~ Town and residents in the immediate area. Mr. Kapellas is concerned with traffic. There is one entry point from 128 north and south. He asked if there could be a consideration of a direct exit off 128 to this facility. Ms. Brown stated ramps to 128 are under Mass DOT. Mass DOT is not in favor or amenable to providing ramps directly into commercial developments. Mr. Kapellas asked if the impact of the project in Newton has been counted into the traffic study. Ms. Brown has projected traffic out to a 2030 condition and grew it out by 1% per year. This takes into account unknown projects. Mr. Kapellas asked if there was any By-Law that would prevent a medical campus or high-level education not ~~for profit~~ or emerging ~~infectious disease~~ labs. Ms. Newman stated ~~those~~ exempt uses such as not-for-profit education would be allowed at this property. Education uses would be allowed by right, ~~but~~ and labs would be by special permit and would also go through review by the Health Department.

Peter Olive, of 133 Thornton Road and Town Meeting Member Precinct H, stated he was glad to see residential units there. He noted it is not the most desirable place for housing but why is it capped at 240. It seems if it were increased the traffic would go down. Mr. Block stated the Board tried to develop a mix of uses. That seemed to be an appropriate mix and balance. They will let the market decide. Mr. Olive noted the housing shortage is acute.

Doug Fox, of 43 Mark Tree Road and Precinct F, noted the traffic study has been pieced together. Traffic is a big issue. The study from 2019 showed a decrease. He asked if the 2015 versus the 2019 study is apples to apples. It does not jive that it went down. He wants to make sure they are really looking at that intersection. Ms. Brown stated the 2015 study was done during the 128 widening project, when ramps were closed, and traffic diverted. Most traffic on Gould was similar from 2015 to 2019. The majority of the reduction was on and off Hunting Road. There is an ongoing project by Mass DOT to construct improvements at the Highland and Gould intersection. She assumed those would be in place when this area gets developed.

Joni Schockett, of 174 Evelyn Road, stated a concern raised at the Heights meeting was green space. She did not hear anything about that. She noted traffic is always worse than studies show. She asked if there was any way to mitigate traffic on side streets when this is up and running. Mr. Block stated when a project comes before the Board a study will be done then and will be looked at very closely. There will also be meetings. Ms. McKnight clarified there was green space shown on the slides.

Ms. Espada stated 20% of the site has to be green space. It could be one area or spread out.

Rachel Green, of 55 Sargent Street, stated she supports as much affordable housing as possible in Needham for racial equity and economic diversity. She feels some apartment complexes do not fit the aesthetics of Needham. She noted modern developers do try to keep design and aesthetics in mind. She thanked the Board for having the meeting.

Leigh Doukas, of 29 Tower Avenue, asked if they were looking to 12% affordable housing rather than the 20% required by 40Bs. Ms. Newman stated 12.5% is the standard Needham has adopted. She has carried that standard forward. The Board is looking to see if there should be a revision to our Zoning By-law ~~the zoning~~ to make it that standard a requirement across all districts. Ms. Cooley clarified that the ~~the~~ Town has met its 40B threshold.

Oscar Mertz, of 67 Rybury Hillway, thanked the Board for continuing to review this site. A new version of this site would be welcome. Studio Enee did a great job helping them see that. This is very helpful and Mixed Use makes sense. Housing is needed for Needham and a friendly 40B would be great here. He commented there is nothing better than green space and he feels the Board should require some green space to be a benefit to the public. He suggested a density of 1.35 be made as of right and special permit density be allowed to go higher. This is a big site and there are a lot of opportunities here.

Wendy Blom, of 89 Parish Road, is in favor of as much residential as possible and to create as much affordable housing as possible. The town needs some racial diversity. She stated if there is housing the town should do some remedies to past affronts to African American families.

Noah Mertz, of 67 Rybury Hillway, supports an FAR of 1.35 and higher. Maximizing density and affordable housing possibilities can right the wrongs of history. Lexington recently adopted a resolution that racism is a public health crisis. He would like to see inclusionary zoning in other parts of town also.

Ellen Fine, of Greendale Avenue, stated her family came in the 50s. Her parents would be upset by Needham today which has become for the wealthy, by the wealthy. She would suggest taking a step back and thinking about development as a community rather than the highest bidder. How long would construction be? She has been back 8 years and construction has been all around her. She asked why not think about an art center, community center or theater. Bring it back to the Town. Why not indoor growing space? She wants green space and not just fake sod. She wants real trees. The town should look at solar. She suggested reusing the existing Muzi building by looking at tiny housing. She asked what happens to Channel 5 which has been here 40 to 50 years. The Board needs to rethink this. We need to care for the earth and care for the people and the fair share.

Holly Charbonner, of 94 Sachem Road, thanked Ellen Fine for her comments. She asked if the new zoning would include energy efficiency requirements.

Artie Crocker, of 14 Fairlawn Street, noted the perimeter is showing one option for housing. Is that because housing would be the only thing allowed on the perimeter? Mr. Block stated that was just a sample. Mr. Crocker referred to Wingate and noted it is not 3 stories high. Wingate is 2½ stories and is not representative of the heights on Gould Street. This needs to be looked at. He does not favor the proposal of having buildings there, at the gateway, right against the road. He is not happy with what he has seen.

Joan Berlin, of 67 Parker Road, asked if the people who did the traffic study looked back at projections to see how close they have been. She noted the climate will be impacted with all of the additional cars in Needham.

Judy Pelletier, of 107 Gould Street, asked if there was any way to reconsider the amount of the site that could be developed for retail. There needs to be walkable amenities in that part of town. She feels retail would help spread traffic out throughout the day. She noted traffic along Central Avenue, especially down to [the light at](#) Chestnut Street, needs to be considered especially during construction to prevent backups.

Adam Cole, of Hillcrest Road, is in favor of a sport's complex idea. He feels 40% of residents could benefit. The initial zoning seems an athletic facility is allowed by right. Why was it changed to a special permit?

Michael Reddy, of 69 Melrose Avenue, echoed Ms. Fine's comments. The Planning Board is taking a reactive approach to what developers say. He feels the railroad right of way could be used. He asked what the Planning Board and Select Board have been doing to ~~consider~~^{level} the use of the railroad right of way like Newton did.

Paula Jacobson, who operates the Charles River YMCA, appreciates the ~~town's~~^{Towns} efforts to bring new uses. The YMCA has been in Needham for 140 years and is a partner to the health and well being of the citizens. Many desire to have a recreational facility in town. She would be willing to work with any developer.

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Mr. Block asked everybody to send comments or questions to planning@needhamma.gov. He thanked all for their comments and suggestions. He noted the Planning Board will post the presentation and materials on the website. There will be a public hearing on 3/16/21. The By-Law will be published prior to that meeting. The Zoning By-Law will go to Town Meeting this spring. He thanked Ms. Espada, Ms. Brown and Ms. Cooley as well as Ms. Newman, Ms. Clee and Mr. Hutchinson.

Upon a motion made by Mr. Alpert, and seconded by Mr. Owens, it was by a roll call vote of the four members present unanimously:

VOTED: to adjourn the meeting at 8:55 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Paul Alpert, Vice-Chairman and Clerk