

NEEDHAM PLANNING BOARD

Wednesday, July 14, 2021

8:00 a.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**

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Or to Listen by Telephone: Dial (for higher quality, dial a number based on your current location):
US: +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592 or +1 346 248 7799 or +1 669 900 9128 or +1 253 215 8782 Then enter ID: **826-5899-3198**

Direct Link to meeting: <https://us02web.zoom.us/j/82658993198>

1. Review of zoning initiatives for the upcoming fiscal year.
2. Minutes.
3. Correspondence.
4. Report from Planning Director and Board members.

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

ARTICLE 1: AMEND ZONING BY-LAW – OUTDOOR SEATING

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

- (a) Amend ~~the first sentence of~~ Section 6.9. Outdoor Seating, Subsection 6.9.1, Applicability, by (i) adding the word “eat-in” before the word “restaurants”; (ii) deleting the words “serving meals for consumption on the premises and at tables with service provided by waitress or waiter is” before the words “permitted under”; and (iii) adding the word “are” before the words “permitted under”; so that it reads as follows:

“Section 6.9.2 shall apply in any business district in which eat-in restaurants are permitted under Section 3.2.2 of this By-Law.”

- (b) Amend the first sentence of Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, by (i) adding the word “eat-in” before the word “restaurants”; (ii) deleting the words “serving meals for consumption on the premises and at tables with service provided by waitress or waiter” before the words “is permitted during; (iii) replacing the words “Section 7.4.4 and 7.4.6” with the words “Sections 7.4.4 and 7.4.6”; and (iv) replacing the words “Board of Selectmen” with the words “Select Board”; so that it reads as follows:

“Seasonal temporary (i.e. April through October) outdoor seating, including but not limited to tables, chairs, serving equipment, planters, and umbrellas, for eat-in restaurants is permitted during normal hours of operation, subject to minor project site plan review with waiver of all requirements of Sections 7.4.4 and 7.4.6 except as are necessary to demonstrate compliance with Section 6.9 by the Planning Board in the case of (a) below and the Select Board in the case of (b) below, provided that:”

- (c) Amend Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, Subparagraph (a) by deleting the words “, licensed,” so that it reads as follows:

“(a) It is within the front yard, rear yard, or side yard of the restaurant’s owned or leased property, but only if said yard abuts a public right-of-way, public property, or other public uses, provided that:”

- (d) Amend ~~the first sentence of~~ Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, Subparagraph (b) by (i) deleting the words “so long as there remains no less than forty-eight inches (48”)”, or as otherwise permitted by law, of unencumbered sidewalk width remaining”; (ii) deleting the word “alternatively” before the words “on a public way”; and (iii) adding the word “on” before the words “other public property”; so that it reads as follows:

“(b) It is within the public sidewalk abutting the front, rear, or side yard of the restaurant’s owned or leased property or on a public way or on other public property

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abutting the front, rear, or side yard of the restaurant's owned or leased property, provided that:"

- (e) Amend Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, Subparagraph (b) (i) by replacing the words "Board of Selectmen" with the words "Select Board", so that it reads as follows:

"(i) No temporary outdoor restaurant seating shall be permitted, unless the Select Board authorizes the placement of temporary outdoor seating within the public right-of-way, public sidewalks and/or on public property;"

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- (f) Amend ~~the first sentence of~~ Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, Subparagraph (b) (iii) by replacing the words "Board of Selectmen" with the words "Select Board", ~~in the first sentence~~ so that it reads as follows:

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"(iii) A minimum width of forty-eight inches (48"), or as otherwise permitted by law, shall be continuously maintained and unobstructed for the sidewalk or entrance into the principal building, or any other designated sidewalks or pedestrian paths, as shown on the plan provided to the Select Board;"

- (g) Amend ~~the first sentence of~~ Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, Subparagraph (b) (iv) by (i) adding the words "shall not be authorized" after the words "Outdoor seating"; (ii) deleting the words "is prohibited" before the words "in designated or required landscape areas"; and (iii) by adding the words "or in parking spaces located within a public way, except for good cause, and where the Select Board finds, after holding a public hearing, that pedestrian and vehicular circulation, the safety of restaurant patrons and the public, and parking for patrons of restaurants, retail establishments and service establishments in the vicinity of the outdoor seating, shall be adequately provided for;" at the end of the subparagraph so that it reads as follows:

"(iv) Outdoor seating shall not be authorized in designated or required landscaped areas, parking lots or drive aisles, or in parking spaces located within a public way, except for good cause, and where the Select Board finds, after holding a public hearing, that pedestrian and vehicular circulation, the safety of restaurant patrons and the public, and parking for patrons of restaurants, retail establishments and service establishments in the vicinity of the outdoor seating, shall be adequately provided for;"

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- (h) Amend Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, Subparagraph (b), by adding the following sentence paragraph after at the end the first paragraph of that section:

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“The Select Board may authorize seasonal temporary outdoor seating under this Section 6.9.2 (b) earlier than April 1 and later than October 31 of each year.”

(g)(i) Amend Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, by replacing the words “Board of Selectmen” with the words “Select Board”, in the ~~second~~^{third} paragraph of the section (~~previously second paragraph~~) so that it reads as follows:

“Items (a)(i), (a)(iii), (a)(v) and (b)(ii), (b)(iv), and (b)(vi) shall not apply during special town-wide festivals or events during the year as designated by the Select Board.”

(h)(i) Amend Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, by deleting the last paragraph of the section and replacing it with the following paragraph to read as follows:

“Where there is authorization for the placement of seasonal temporary outdoor restaurant seating and where such seating could be interpreted to be an increase in the number of seats serving a restaurant, such seating shall not be counted toward the off-street parking or loading requirements, provided that (1) such seating remains seasonal and temporary; and (2) such seating does not increase capacity by more than thirty percent (30%) unless such increase is authorized by the Special Permit Granting Authority that granted the special permit allowing the use of the premises as a restaurant, with or without a hearing, as said Special Permit Granting Authority shall determine.”

Or take any other action relative thereto.

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“Section 6.9.2 shall apply in any business district in which eat-in restaurants are permitted under Section 3.2.2 of this By-Law.”

- (b) Amend the first sentence of Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, by (i) adding the word “eat-in” before the word “restaurants”; (ii) deleting the words “serving meals for consumption on the premises and at tables with service provided by waitress or waiter” before the words “is permitted during”; (iii) replacing the words “Section 7.4.4 and 7.4.6” with the words “Sections 7.4.4 and 7.4.6”; and (iv) replacing the words “Board of Selectmen” with the words “Select Board”; so that it reads as follows:

“Seasonal temporary (i.e. April through October) outdoor seating, including but not limited to tables, chairs, serving equipment, planters, and umbrellas, for eat-in restaurants is permitted during normal hours of operation, subject to minor project site plan review with waiver of all requirements of Sections 7.4.4 and 7.4.6 except as are necessary to demonstrate compliance with Section 6.9 by the Planning Board in the case of (a) below and the Select Board in the case of (b) below, provided that:”

- (c) Amend Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, Subparagraph (a) by deleting the words “, licensed,” so that it reads as follows:

“(a) It is within the front yard, rear yard, or side yard of the restaurant’s owned or leased property, but only if said yard abuts a public right-of-way, public property, or other public uses, provided that:”

- (d) Amend Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, Subparagraph (b) by (i) deleting the words “so long as there remains no less than forty-eight inches (48”)”, or as otherwise permitted by law, of unencumbered sidewalk width remaining”; (ii) deleting the word “alternatively” before the words “on a public way”; and (iii) adding the word “on” before the words “other public property”; so that it reads as follows:

“(b) It is within the public sidewalk abutting the front, rear, or side yard of the restaurant’s owned or leased property or on a public way or on other public property

abutting the front, rear, or side yard of the restaurant's owned or leased property, provided that:"

- (e) Amend Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, Subparagraph (b) (i) by replacing the words "Board of Selectmen" with the words "Select Board", so that it reads as follows:

"(i) No temporary outdoor restaurant seating shall be permitted, unless the Select Board authorizes the placement of temporary outdoor seating within the public right-of-way, public sidewalks and/or on public property;"

- (f) Amend Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, Subparagraph (b) (iii) by replacing the words "Board of Selectmen" with the words "Select Board", so that it reads as follows:

"(iii) A minimum width of forty-eight inches (48"), or as otherwise permitted by law, shall be continuously maintained and unobstructed for the sidewalk or entrance into the principal building, or any other designated sidewalks or pedestrian paths, as shown on the plan provided to the Select Board;"

- (g) Amend Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, Subparagraph (b) (iv) by (i) adding the words "shall not be authorized" after the words "Outdoor seating"; (ii) deleting the words "is prohibited" before the words "in designated or required landscape areas"; and (iii) by adding the words ", or in parking spaces located within a public way, except for good cause, and where the Select Board finds, after holding a public hearing, that pedestrian and vehicular circulation, the safety of restaurant patrons and the public, and parking for patrons of restaurants, retail establishments and service establishments in the vicinity of the outdoor seating, shall be adequately provided for;" at the end of the subparagraph so that it reads as follows:

"(iv) Outdoor seating shall not be authorized in designated or required landscaped areas, parking lots or drive aisles, or in parking spaces located within a public way, except for good cause, and where the Select Board finds, after holding a public hearing, that pedestrian and vehicular circulation, the safety of restaurant patrons and the public, and parking for patrons of restaurants, retail establishments and service establishments in the vicinity of the outdoor seating, shall be adequately provided for;"

- (h) Amend Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, Subparagraph (b), by adding the following sentence at the end of the section:

"The Select Board may authorize seasonal temporary outdoor seating under this Section 6.9.2 (b) earlier than April 1 and later than October 31 of each year."

- (i) Amend Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, by replacing the words “Board of Selectmen” with the words “Select Board”, in the second paragraph of the section so that it reads as follows:

“Items (a)(i), (a)(iii), (a)(v) and (b)(ii), (b)(iv), and (b)(vi) shall not apply during special town-wide festivals or events during the year as designated by the Select Board.”

- (j) Amend Section 6.9. Outdoor Seating, Subsection 6.9.2, Basic Requirements Seasonal Outdoor Seating, by deleting the last paragraph of the section and replacing it with the following paragraph to read as follows:

“Where there is authorization for the placement of seasonal temporary outdoor restaurant seating and where such seating could be interpreted to be an increase in the number of seats serving a restaurant, such seating shall not be counted toward the off-street parking or loading requirements, provided that (1) such seating remains seasonal and temporary; and (2) such seating does not increase capacity by more than thirty percent (30%) unless such increase is authorized by the Special Permit Granting Authority that granted the special permit allowing the use of the premises as a restaurant, with or without a hearing, as said Special Permit Granting Authority shall determine.”

Or take any other action relative thereto.

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6.9 Outdoor Seating

6.9.1 Applicability

Section 6.9.2 shall apply in any business district in which eat-in restaurants ~~serving meals for consumption on the premises and at tables with service provided by waitress or waiter is~~ are permitted under Section 3.2.2 of this By-Law.

6.9.2 Basic Requirements Seasonal Outdoor Seating

Seasonal temporary (i.e. April through October) outdoor seating, including but not limited to tables, chairs, serving equipment, planters, and umbrellas, for eat-in restaurants ~~serving meals for consumption on the premises and at tables with service provided by waitress or waiter is~~ permitted during normal hours of operation, subject to minor project site plan review with waiver of all requirements of Sections 7.4.4 and 7.4.6 except as are necessary to demonstrate compliance with Section 6.9 by the Planning Board in the case of (a) below and the Select Board ~~Board of Selectmen~~ in the case of (b) below, provided that:

- (a) It is within the front yard, rear yard, or side yard of the restaurant's owned, ~~licensed,~~ or leased property, but only if said yard abuts a public right-of-way, public property, or other public uses, provided that:
 - (i) Such use is clearly related to the restaurant conducted inside the principal building;
 - (ii) A minimum width of forty-eight inches (48"), or as otherwise provided by law, shall be continuously maintained and unobstructed for the sidewalk or entrance into the principal building, or any other designated sidewalks or pedestrian paths, as shown on the plan provided to the Planning Board;
 - (iii) Outdoor seating is prohibited in designated or required landscaped areas, parking lots, or drive aisles;
 - (iv) Such use does not obstruct or otherwise interfere with visibility at intersections;
 - (v) Except as otherwise provided in subsection (b), the outdoor seating must be on the same lot as the establishment; and;
 - (vi) During all operating hours and thereafter, the area of outdoor seating must be kept clean, including clearing of all tables and removal of all trash.
- (b) It is within the public sidewalk abutting the front, rear, or side yard of the restaurant's owned or leased property ~~so long as there remains no less than forty eight inches (48"), or as otherwise permitted by law, of unencumbered sidewalk width remaining, or, alternatively,~~

on a public way or on other public property abutting the front, rear, or side yard of the restaurant's owned or leased property, provided that:

- (i) No temporary outdoor restaurant seating shall be permitted, unless the Select Board ~~Board of Selectmen~~ authorizes the placement of temporary outdoor seating within the public right-of-way, public sidewalks and/or on public property;
- (ii) Such use is clearly related to the restaurant conducted inside the principal building;
- (iii) A minimum width of forty-eight inches (48"), or as otherwise permitted by law, shall be continuously maintained and unobstructed for the sidewalk or entrance into the principal building, or any other designated sidewalks or pedestrian paths, as shown on the plan provided to the Select Board ~~Board of Selectmen~~;
- (iv) Outdoor seating ~~shall not be authorized~~ is prohibited in designated or required landscaped areas, parking lots, or drive aisles, or in parking spaces located within a public way, except for good cause, and where the Select Board finds, after holding a public hearing, that pedestrian and vehicular circulation, the safety of restaurant patrons and the public, and parking for patrons of restaurants, retail establishments and service establishments in the vicinity of the outdoor seating, shall be adequately provided for;
- (v) Such use does not obstruct or otherwise interfere with visibility at intersections;
- (vi) The outdoor seating must be adjacent to the restaurant establishment and in front, to the rear, or to the side of, as the case may be, the front face of the restaurant's owned or leased property; and;
- (vii) During all operating hours and thereafter, the area of outdoor seating must be kept clean, including clearing of all tables and removal of all trash.

The Select Board may authorize seasonal temporary outdoor seating under this Section 6.9.2 (b) earlier than April 1 and later than October 31 of each year.

Items (a)(i), (a)(iii), (a)(v) and (b)(ii), (b)(iv), and (b)(vi) shall not apply during special town-wide festivals or events during the year as designated by the Select Board ~~Board of Selectmen~~.

Where there is authorization for the placement of seasonal temporary outdoor restaurant seating and where such seating could be interpreted to be an increase in the number of seats serving a restaurant, such seating shall not be counted toward the off-street parking or loading requirements, ~~so long as provided that (1) the~~ such seating remains seasonal and temporary; and (2) such seating does not increase capacity by more than thirty percent (30%) unless such increase is authorized by the Special Permit Granting Authority that granted the special permit allowing the use of the premises as a restaurant, with or without a hearing, as said Special Permit Granting Authority shall determine.

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 - (ii) A minimum width of forty-eight inches (48"), or as otherwise provided by law, shall be continuously maintained and unobstructed for the sidewalk or entrance into the principal building, or any other designated sidewalks or pedestrian paths, as shown on the plan provided to the Planning Board;
 - (iii) Outdoor seating is prohibited in designated or required landscaped areas, parking lots, or drive aisles;
 - (iv) Such use does not obstruct or otherwise interfere with visibility at intersections;
 - (v) Except as otherwise provided in subsection (b), the outdoor seating must be on the same lot as the establishment; and;
 - (vi) During all operating hours and thereafter, the area of outdoor seating must be kept clean, including clearing of all tables and removal of all trash.
- (b) It is within the public sidewalk abutting the front, rear, or side yard of the restaurant's owned or leased property or on a public way or on other public property abutting the front, rear, or side yard of the restaurant's owned or leased property, provided that:
 - (i) No temporary outdoor restaurant seating shall be permitted, unless the Select Board authorizes the placement of temporary outdoor seating within the public right-of-way, public sidewalks and/or on public property;

- (ii) Such use is clearly related to the restaurant conducted inside the principal building;
- (iii) A minimum width of forty-eight inches (48”), or as otherwise permitted by law, shall be continuously maintained and unobstructed for the sidewalk or entrance into the principal building, or any other designated sidewalks or pedestrian paths, as shown on the plan provided to the Select Board;
- (iv) Outdoor seating shall not be authorized in designated or required landscaped areas, parking lots or drive aisles, or in parking spaces located within a public way, except for good cause, and where the Select Board finds, after holding a public hearing, that pedestrian and vehicular circulation, the safety of restaurant patrons and the public, and parking for patrons of restaurants, retail establishments and service establishments in the vicinity of the outdoor seating, shall be adequately provided for;
- (v) Such use does not obstruct or otherwise interfere with visibility at intersections;
- (vi) The outdoor seating must be adjacent to the restaurant establishment and in front, to the rear, or to the side of, as the case may be, the front face of the restaurant’s owned or leased property; and;
- (vii) During all operating hours and thereafter, the area of outdoor seating must be kept clean, including clearing of all tables and removal of all trash.

The Select Board may authorize seasonal temporary outdoor seating under this Section 6.9.2 (b) earlier than April 1 and later than October 31 of each year.

Items (a)(i), (a)(iii), (a)(v) and (b)(ii), (b)(iv), and (b)(vi) shall not apply during special town-wide festivals or events during the year as designated by the Select Board.

Where there is authorization for the placement of seasonal temporary outdoor restaurant seating and where such seating could be interpreted to be an increase in the number of seats serving a restaurant, such seating shall not be counted toward the off-street parking or loading requirements, provided that (1) such seating remains seasonal and temporary; and (2) such seating does not increase capacity by more than thirty percent (30%) unless such increase is authorized by the Special Permit Granting Authority that granted the special permit allowing the use of the premises as a restaurant, with or without a hearing, as said Special Permit Granting Authority shall determine.

Tentative Schedule for Outdoor Dining Fall Special Town Meeting

Wednesday July 14, 2021 – Planning Board to finalize language to include in legal notice

Vote to send language to Select Board

Tuesday July 20, 2021 – Select Board refer back zoning article to Planning Board.

Big gap here because both Select Board and Planning Board are not meeting. Potential to advance date of final zoning language completion by 2-3 weeks from July 20.

Friday August 13, 2021 – Send legal notice to the newspaper

Thursday August 19, 2021 – Post notice with Town Clerk, first run in newspaper

Thursday August 26, 2021 – second run in paper

Wednesday September 8, 2021 – Hearing date

Tuesday September 21, 2021 – finalize language for warrant at PB meeting

Friday October 1, 2021 - send final language to Town Manager office for warrant inclusion

Monday October 25, 2021 – tentative Fall Town Meeting date

From: [Lee Newman](#)
To: ["c.agualimpia@gmail.com"](mailto:c.agualimpia@gmail.com)
Cc: [Alexandra Clee](#); [Theodora Eaton](#)
Subject: FW: Firearms Stores Zoning - Needham
Date: Tuesday, June 15, 2021 10:43:18 AM

Carlos,

I received your email and will share it with the Planning Board. Presently, Needham's zoning by-law treats a gun store as a retail business which is a use allowed across a number of Needham's business districts by right. It appears that such was the case in Newton prior to the adoption of the recent change which converted the use to one only permitted by special permit with setback standards established to identified sensitive uses.

Thanks for your thoughtful email,

Lee Newman

From: Carlos Agualimpia <c.agualimpia@gmail.com>
Sent: Wednesday, June 9, 2021 3:16 PM
To: Theodora Eaton <TEaton@needhamma.gov>; Lee Newman <LNewman@needhamma.gov>
Subject: Re: Firearms Stores Zoning - Needham

Tedi,

Thanks.

Lee,

An excerpt from Newton Mayor's newsletter, for your reference:

.....**"Strict Gun Store Zoning Passed and Signed**

Today I signed a zoning amendment passed by the City Council last night that strictly controls and limits gun stores in Newton.

The updated zoning importantly mandates that any potential firearm business seeking to locate in Newton apply for a Special Permit from the City Council which would then necessitate a two-thirds majority vote of the Council (16 out of 24 Councilors) to receive approval. The zoning amendment also incorporates buffer distances from residences and sensitive uses (e.g., day care centers and schools) resulting in only three primary, small potential locations.

The zoning amendment passed with a 23-1 vote.

As Councilor Josh Krintzman said last night, before last night's vote and prior to this restrictive zoning, a gun store could have opened in Newton on any one of 777 parcels of

land without approval of the City Council.

The zoning amendment officially will become “effective” in 20 days. But, it will apply retroactively to any uses that had not commenced or received a building permit by April 23, 2021, the date of first publication of the notice of the public hearing.”.....

Looking forward to your revert....

Regards,

Carlos

On Jun 9, 2021, at 2:20 PM, Theodora Eaton <TEaton@needhamma.gov> wrote:

Hello Carlos. I am fine and hope you are as well. I am forwarding you question to Lee Newman our Planning Director.

Take care!

Tedi

Get [Outlook for iOS](#)

From: Carlos Agualimpia <c.agualimpia@gmail.com>

Sent: Wednesday, June 9, 2021 10:32 AM

To: Theodora Eaton

Subject: Firearms Stores Zoning - Needham

Tedi,

Hi. Hope this email finds you safe and healthy. Can you please pass on the below inquiry to the Planning Board?

Thanks in advance....

Stay safe.

Carlos Agualimpia

Dear Planning Board,

As you might be aware, there has been a lot going on with Gun Store Zoning in Newton, with recent zoning legislation being approved. This note is to briefly inquire on what the current zoning regulation/legislation is for Gun Stores in Needham.

Thanks in advance for a prompt response.

Regards,

Carlos Agualimpia
Town Meeting Member
Precinct C



Ruthanne Fuller
Mayor

City of Newton, Massachusetts

Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone

(617) 796-1120

Telefax

(617) 796-1142

TDD/TTY

(617) 796-1089

www.newtonma.gov

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: May 6, 2021

TO: Councilor Crossley, Chair
Members of the Zoning and Planning Committee

FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Deputy Director of Planning and Development
Zachery LeMel, Chief of Long Range Planning

RE: #145-21 Request for Chapter 30 Amendment to establish regulations for gun establishments
HER HONOR THE MAYOR AND COUNCILORS ALBRIGHT, KRINTZMAN, LEARY, OLIVER, GREENBERG, NORTON, LUCAS, KELLEY, WRIGHT, MALAKIE, MARKIEWICZ, GENTILE, DOWNS, CROSSLEY, HUMPHREY, DANBERG, NOEL, BOWMAN, LAREDO, GROSSMAN, BAKER, LIPOF, KALIS AND RYAN requesting amendments to the Newton Zoning Ordinance, Chapter 30, including, but not limited to, the addition of definitions of "Firearm" and "Firearm Businesses", and amendments to Section 4.4.1 Allowed Uses and Section 6.10 Restricted Uses to regulate the use of land, structures and buildings for the siting and operation of gun ranges or the retail or wholesale operation involving gunsmithing, the purchase or sale of firearms, the sale of ammunition, or firearms accessories, and to restrict such uses to the Business 4, Mixed Use 1, Manufacturing, and Light Manufacturing Districts only and only upon the granting of a special permit, and to establish minimum standards and criteria for the granting of such special permits.

MEETING DATE: May 10, 2021

CC: City Council
Planning and Development Board
Jonathan Yeo, Chief Operating Officer
Alissa O. Giuliani, City Solicitor
John Lojek, Commissioner of ISD

Executive Summary

The City of Newton does not currently regulate the zoning for firearms business (or related uses). A firearm dealer would be considered a general retail use and would be allowed either by-right or by special permit in most business and mixed-use zones as well as the limited manufacturing zoning district. The City Council has broad authority to regulate all land uses in Newton, including the location of firearm dealers. Currently, the zoning ordinance identifies certain uses that are to be treated differently than other retail uses such as adult businesses and marijuana retailers. Firearm businesses represent another use that warrants specialized zoning regulations.

The subject docket item is a request to amend Newton's current zoning ordinance to restrict firearm businesses only to certain zoning districts, to require a special permit, and to provide minimum standards for those uses. Attached to this memo is a draft zoning ordinance for firearm businesses developed by the Law and Planning Departments, both a redlined version showing changes from the April 26th version and a clean version (**Attachments A and B**), and an updated frequently asked questions (FAQ) document from the Law Department, including responses to questions raised at the April 26th ZAP meeting (**Attachment C**). More information, including the maps showing zoning and buffer alternatives, can be found here:

<https://www.newtonma.gov/government/planning/plans-policies-strategies/firearms-zoning-amendment>. Staff reviewed a sampling of zoning ordinances and bylaws for firearm businesses from other municipalities both in and outside of Massachusetts. Zoning regulations for firearm businesses are not common and the only nearby communities that currently regulate firearm businesses through zoning that staff has found are Dedham and Westwood.

The key elements of the proposed ordinance are limiting firearm businesses to the certain zoning districts; always requiring a special permit (a discretionary approval from the City Council requiring a public hearing); requiring buffers from sensitive uses; and applying additional operational standards and criteria for approval. Based on feedback from the April 26th Zoning and Planning (ZAP) Committee meeting, City staff have analyzed various options including variations in the proposed zoning districts, the proposed buffer distances, and the sensitive uses to be buffered. Based on this analysis, Planning staff recommend allowing firearm businesses in the Business 2 (BU2), Business 4 (BU4) and Manufacturing (M) districts and requiring 150-foot buffers between all firearm businesses and properties containing a residential use, and a 1,000-foot buffers between all firearm businesses and k-12 schools, childcare facilities (including daycares and preschools), colleges and universities, parks and playgrounds, libraries, nursing homes and any existing firearm dealers or firing ranges. We have found these to be the most restrictive buffers that can be applied while still allowing for the opportunity for firearm businesses. The Mixed Use 1 (Needham Street) and Limited Manufacturing (Wells Avenue) districts were proposed in the draft ordinance presented at the April 26th ZAP meeting. These districts have been removed from the draft as they are fully covered by the recommended buffers.

Firearm Zoning Examples

Staff reviewed a sampling of zoning ordinances for firearm businesses in other municipalities in Massachusetts and beyond. Almost all ordinances require special approval for firearm businesses (a special permit in Massachusetts or a conditional use permit elsewhere). Below is a summary of the key points from other ordinances:

- Dedham, MA - Dedham recently passed a by-law regulating firearm sales.
 - Firearms businesses are limited to the Adult Use Overlay District
 - 150-foot buffer from a residential use or residential zoning district, school, library, church or other religious use, child-care facility, park, playground, recreational areas where large numbers of minors regularly travel or congregate, establishments selling alcohol for on-site consumption, and other adult use and firearms businesses.
- Westwood, MA
 - Firearms/Explosives sales and service are limited to the Local Business Districts, Highway Business District and Industrial District
 - Westwood does not appear to require specific buffers between firearms businesses and other uses, however most uses in the Highway Business and Industrial districts are required to provide a buffer from adjacent residential properties.
- Bloomington, MN – Bloomington regulates primary and incidental firearms sales and firing ranges.
 - Firearms sales are permitted in certain commercial districts; firing ranges are only permitted in some industrial districts.
 - 250-foot buffer from residential zoning districts, daycares, and k-12 schools.
 - Primary firearm sales must also be 1,000 feet from another primary firearm sales facility.
- Piscataway, NJ
 - Firearm sales to certain commercial districts.
 - 1,000-foot buffer from nursery schools, preschools, child, adult and special needs day care centers, schools, colleges and universities, funeral homes, health services facilities, other firearms sales dealers, assisted living facilities, places of worship, liquor stores, establishments selling alcohol for onsite consumption, and parks, playgrounds and commercial recreational facilities.
- Contra Costa, CA
 - 500-foot buffer from schools, daycares, parks, establishments that have on-site or off-site alcohol sales, places of worship, and existing firearm sales facilities.
- Windsor, CA
 - 500-foot buffer from parks, libraries, churches, personal services, and preschools.
 - 1,000-foot buffer from all schools.
- Healdsburg, CA

- 500-foot buffer from churches, chapels, places of worship, schools, libraries, youth centers, commercial day care establishments, parks, and other locations with firearm sales.
- McCordsville, IN
 - Firearm sales limited to a medium intensity industrial district.
 - 200-foot buffer zone from any school.
- Worcester, MA – Worcester only regulates shooting ranges
 - 1,000-foot buffer from schools and a 100 foot buffer from a public park or playground. Worcester does not appear to regulate firearm sales.

Notably, zoning regulations for firearm businesses are rare and we have found few examples in Massachusetts so far. Most of our neighboring communities do not appear to regulate firearm businesses through zoning. Staff reviewed zoning ordinances for the following Massachusetts communities: Acton, Arlington, Ashland, Bedford, Belmont, Beverly, Bolton, Boston, Boxborough, Braintree, Brockton, Burlington, Carlisle, Cambridge, Chatham, Chelsea, Concord, Danvers, Dedham, Dover, Essex, Everett, Fall River, Fitchburg, Framingham, Gloucester, Hamilton, Holliston, Hudson, Ipswich, Lexington, Lincoln, Littleton, Lynn, Lynnfield, Malden, Manchester-by-the-Sea, Marblehead, Medfield, Medford, Medway, Melrose, Middleton, Milton, Nahant, Natick, Needham, North Reading, Norwood, Peabody, Quincy, Reading, Revere, Rockport, Salem, Saugus, Sherborn, Stoneham, Stoughton, Sudbury, Swampscott, Topsfield, Wakefield, Watertown, Waltham, Wellesley, Wenham, Weston, Westwood, Weymouth, Wilmington, Winchester, Winthrop, Woburn, and Worcester. Of these communities, the only ones that regulate firearms sales were Dedham and Westwood. Framingham excludes firing ranges from the definition of outdoor recreational facilities and North Reading prohibits gun and shooting clubs in their Highway Business zoning district. Everett appears to have regulated gun shops previously, but they are no longer included after a big rezoning in 2020.

Ordinance Framework

The proposed draft ordinance draws from firearms zoning regulations from other municipalities as well as the City's existing ordinances regulating adult businesses and marijuana uses. The draft ordinance defines terms related to firearm business uses not currently included in our zoning ordinance, such as ammunition, firearm, firearm accessory, firearm dealer, firing range, and gunsmith and proposes that the uses only be permitted by special permit and only in certain districts. In the prior draft, firearm sales were defined as a firearm business. To avoid confusion with the larger use category of firearm business uses, firearm sales are now defined as a firearm dealer. The ordinance also identifies sensitive uses from which a firearm business use should be buffered from, the minimum distances required between sensitive uses and firearm businesses, provides additional operational standards, includes required application materials, and identifies new special permit criteria which must be met in addition to the general special permit criteria.

Zoning Districts

Currently in Newton, a firearm dealer would be classified under zoning as a retail use. Retail uses are currently permitted, either by-right or by special permit in the Business 1 (BU1), Business 2 (BU2), Business 3 (BU3), Business 4 (BU4), Mixed Use 1 (MU1), Mixed Use 2 (MU2), Mixed Use 4 (MU4), Mixed Use 3 (MU3), and Limited Manufacturing (LM) zoning districts. The MU1 district only allows for retailers with more than 5,000 square feet. The attached zoning amendment recommends limiting firearm business uses to the BU2, BU4, and Manufacturing (M) zones. The initial proposal discussed at the April 26th ZAP meeting recommended the BU4, MU1, LM, and M zoning districts. Several City Councilors recommended expanding the zoning districts but applying more restrictive buffers. Planning staff added in the BU2 district as it provided additional opportunity and removed the MU1 and LM districts because once the recommended buffers are applied there are no areas remaining within these districts. This combination of zoning districts provided the ability to apply the most restrictive buffers from sensitive uses.

Other zoning districts were also considered but not ultimately recommended. The BU1 district is typically limited to the core of village centers, which are not considered appropriate locations for firearm businesses. The BU3 district is not mapped and the BU5 district only exists in a couple locations and would be largely eliminated by buffers. The MU2 district is a small portion of Needham Street that immediately abuts residential properties and a park. The MU3 district is only located at Riverside Station where the proposed development includes retail spaces on the ground floor of buildings with residential units above. The MU4 district is only mapped at locations where there has been a rezoning in conjunction with a mixed-use multifamily building in a village center, such as 28 Austin Street and Trio at Washington and Walnut Streets. The MU4 district also requires active, transparent uses on the ground floor and residential units above.

Planning staff considered the suggestion to explore an overlay district for firearm businesses. An overlay was not considered in the docket or public hearing notice for this item and would require a new public hearing notice. The City of Newton does not currently have any overlay districts so introducing a new tool could also take additional time. Additionally, an overlay district does not solve the problem of Newton having very few commercial areas and even fewer that are not immediately surrounded by residential or other sensitive uses. The proposed districts along with the buffers represent a balance of providing opportunities while also distributing those across the City as much as possible given the locations of commercial zoning districts and providing sufficient buffering from sensitive uses. The zoning districts also represent a starting point and are not an indication that every remaining building located outside of a buffer would be an appropriate location for a firearm business. Any firearm business will still require a Special Permit and the City Council has the authority to determine whether the proposed business is appropriate in the given location.

Standards

The proposed draft ordinance includes additional standards for firearm businesses. These include:

- Requiring compliance with all federal, state and local laws and regulations;
- Prohibiting graphics, symbols, or images of firearms or firearm accessories from being displayed or visible from the exterior of the business;
- Prohibiting a firearm business from locating within a building containing a residential use;
- Requiring all firearm businesses to be located within a fully enclosed building;
- Giving the City Council authority to review and impose restrictions on signage;
- Limiting hours of operation to 9 a.m. to 9 p.m. with the ability to further restrict as part of the Special Permit review;
- Requiring the submittal of a security plan for review and approval by the Newton Police Department, including security provisions, physical layout of the interior, how firearms will be secured outside business hours, number of employees;
- Requiring submittal of an operations and management plan for review and approval by the Newton Police Department;
- Requiring the firearm business to conduct criminal background checks for all employees.
- Restricts unaccompanied minors from entering a firearm business; and
- Requires all firearm dealers to videotape the point of sale of all firearm transactions and maintain videos for six months.

At the April 26th ZAP meeting several City Councilors expressed a desire to restrict or prohibit transparency into firearm businesses as well as to limit businesses to the upper floors of buildings. Planning staff consulted with the Newton Police Department, who strongly advised against any restrictions on transparency or locations other than the ground floor. The police recommended that firearm businesses, particularly firearm dealers, be located in visible locations and that visibility into the business be maintained for safety purposes. Maintaining visibility increases safety as there are more eyes on the business and police can more easily monitor the store and can see into the store prior to entering if they are ever called to the scene, such as for a robbery. State law also prohibits firearms from being visible from the street, so it is unnecessary to put restrictions on visibility.

Additional Firearm Regulations

Firearm sales are highly regulated in Massachusetts and all state and Federal requirements will remain in effect. Some key aspects of firearm regulations include a ban on the sale of assault weapons, a requirement that all firearms within stores are secured in a locking container or by equipping the firearm with a tamper-proof locking mechanism, a firearms dealer is prohibited from displaying firearms in the window of a store, and the Police Department is the local licensing authority and is required to review and approve any license to sell firearms and to ensure all required safety measures are in place as well as perform annual inspections of a

dealer's sales records. All firearm businesses will be subject to all other applicable local and state ordinances and regulations as well, such as noise limitations, hazardous waste removal, parking requirements, etc. More information can be found in the attached FAQ as well as here: [Firearms Zoning Amendment | City of Newton, MA.](#)

Special Permit Application

Application Requirements

Under the proposed ordinance, all firearm businesses will require a Special Permit from the City Council. As part of the application, and in addition to the standard application requirements, applicants for a firearm business will be required to submit the following:

- Narrative providing a description of the proposed activities;
- Lighting analysis;
- Context map showing all properties and land uses within a 1,000-foot radius;
- Description of ownership, management and employees
- Comprehensive sign plan.

Depending on the nature of the application the City Council may also request additional information through the special permit review process. Firing ranges are required to show they will not result in adverse impacts due to noise, hazardous materials, or air quality, which will likely require the submittal of additional studies and analyses. Additional plans such as those showing landscaping, screening, and/or loading areas may also be requested.

Special Permit Criteria

All firearm businesses will require a Special Permit from the City Council. A Special Permit is a discretionary approval, meaning even if a business is located in an allowed district, outside of the buffers, and meets all of the standards listed above, the City Council still has the discretion to deny the request if they find the business does not meet the required criteria.

All Special Permits require the City Council to make a finding that the proposed application meets all of the following criteria:

- The specific site is an appropriate location for such use, structure;
- The use as developed and operated will not adversely affect the neighborhood;
- There will be no nuisance or serious hazard to vehicles or pedestrians; and
- Access to the site over streets is appropriate for the types and numbers of vehicles involved.

In addition to the standard criteria for all Special Permits, the draft ordinance adds the following additional criteria for all firearm businesses:

- The lot is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the lot;
- The location will have adequate and safe storage, security, and a lighting system;

- Loading, refuse, and service areas are designed to be secure and shielded from abutting uses;
- The establishment is designed to minimize any adverse impacts on abutters; and
- The establishment has satisfied all of the conditions and requirements of this section.

Firing ranges will also need to meet this additional criterion:

- The use will not result in adverse impacts due to noise, hazardous materials, or air quality.

Buffers

In addition to restricting the number of zoning districts where a firearm business may locate and requiring a Special Permit for all firearm businesses, establishing reasonable buffers are another tool to help ensure compatibility between a proposed firearm business and surrounding uses.

Buffer Comparisons

Most of the firearm zoning regulations reviewed contained buffers from sensitive uses. The buffers reviewed range from 150 feet to 1,000 feet depending on the size of the community and the category of sensitive use. Sensitive uses also varied though all included schools, most included daycares, parks, and playgrounds, and some also included buffers from residential uses and/or residential districts. Buffers from residential uses or districts were the smallest at 150 – 250 feet. Newton’s current zoning ordinance also requires a 500-foot buffer between adult businesses and the nearest school, religious use, public park intended for passive or active recreation, youth center, day care facility, family day care facility, center for child counseling, great pond, or navigable river and 150 feet from any residential property line. Additionally, adult businesses must maintain a 1,000-foot buffer from any other adult business within the City or an adjacent municipality and from any zoning district that allows for an adult business in an adjacent municipality. Marijuana retailers and medical marijuana treatment centers are also required to be at least 500 feet from k-12 public and private schools and a half mile from other marijuana retailers and medical marijuana treatment centers.

Buffer Analysis

Based on feedback from the April 26th ZAP meeting, staff analyzed different combinations of sensitive uses and buffer distances. The following buffer distances and sensitive uses were analyzed:

- 100-foot, 150-foot, 250-foot, and 500-foot buffers from properties containing a residential use
- 500-foot and 1,000-foot buffers from k-12 schools, daycare centers, preschools, child-care facilities, land or structures used for religious purposes, libraries, nursing homes, marijuana retailers, and establishments with a liquor license

Staff reviewed different iterations in order to find the most effective combination of buffer distances and sensitive uses. Residential uses and schools were prioritized first then other uses where children would be expected to congregate. Given the residential nature of the city, the residential buffers had the largest effect of eliminating potential properties. In the ordinances reviewed, residential buffers were not very common and were typically smaller than other buffers. Several residential buffers were analyzed ranging from 100 feet to 500 feet and both 500-foot and 1,000-foot buffers were analyzed for all other sensitive uses.

The first draft of the ordinance required that buffer distances be measured from the property line of the firearm business to the property line of the sensitive use. When doing the mapping analysis, we found that under all scenarios there were few, if any, entire parcels that remained outside of the buffers. The attached draft ordinance has been revised to require the measurement be taken from the building containing the firearm business to the property line of the sensitive use. As currently written, this would mean that even if there are multiple tenants in a building, no point on the building could be within the minimum buffer distance from a property containing a sensitive use.

Recommendation

After careful analysis of various combinations of zoning districts, buffer distances, and sensitive uses the Planning Department recommends including the BU2, BU4 and M districts with a 150-foot buffer between any firearm business and any property containing a residential uses and a 1,000-foot buffer from between any firearm business and any public and private k-12 school, daycare center, preschool, childcare facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library, nursing home or existing firearm dealer or firing range. The only suggested sensitive uses not included are marijuana retailers and establishments with a liquor license. When those uses are added they eliminate all possible opportunities (see Alternative 3 below). The recommended proposal limits firearm businesses to a portion of Route 9 in Chestnut Hill and part of the area near the Waltham border at Rumford Avenue and Riverview Avenue and provides for the largest buffers of any of the firearm zoning ordinances reviewed. The map illustrating the recommended zoning districts and buffers can be found [here](#).

Alternatives Analysis

The maps linked below illustrate several of the alternatives analyzed by the Planning Department but ultimately not recommended.

Alternative 1: <https://www.newtonma.gov/home/showpublisheddocument/69406>

Alternative 1 provides the most opportunity for firearm businesses and most closely aligns with the buffers required for adult businesses in Newton. This alternative is not recommended as a more restrictive option is feasible.

- BU2, BU4, M, LM, MU1 zoning districts
- 150-foot buffer from any property containing a residential use

- 1,000-foot buffer from public and private k-12 schools
- 500-foot buffer from any daycare center, preschool, childcare facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library or nursing home

Alternative 2: <https://www.newtonma.gov/home/showpublisheddocument/69408>

Alternative 2 is the same as Alternative 1, except the BU2 zone is not included and the proposed zoning districts align with those in the April 26th proposal. Alternative 2 provides fewer opportunity areas than Alternative 1 (and the number of existing buildings that are fully outside of buffers would further reduce the available areas) while providing smaller buffers than the recommended alternative.

- BU4, M, LM, MU1 zoning districts
- 150-foot buffer from any property containing a residential use
- 1,000-foot buffer from public and private k-12 schools
- 500-foot buffer from any daycare center, preschool, childcare facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library or nursing home

Alternative 3: <https://www.newtonma.gov/home/showpublisheddocument/69412>

Alternative 3 is the same as Alternative 1, except marijuana retailers and establishments with a liquor license are included in the list of sensitive uses. When buffers are applied to these additional sensitive uses only small slivers of sites are left and no existing buildings are fully outside of the buffers, making this alternative unfeasible.

- BU2, BU4, M, LM, MU1 zoning districts
- 150-foot buffer from any property containing a residential use
- 1,000-foot buffer from public and private k-12 schools
- 500-foot buffer from any daycare center, preschool, childcare facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library, nursing home, marijuana retailer or establishment with a liquor license

Alternative 4: <https://www.newtonma.gov/home/showpublisheddocument/69414>

Alternative 4 is the same as Alternative 1, except a larger residential buffer is included. While there are still a few areas that are outside of the buffers, with the larger residential buffer far fewer buildings are located outside of the buffers and the buffer around the other sensitive uses is still smaller than the recommended alternative.

- BU2, BU4, M, LM, MU1 zoning districts
- 250-foot buffer from any property containing a residential use
- 1,000-foot buffer from public and private k-12 schools
- 500-foot buffer from any daycare center, preschool, childcare facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library or nursing home

Alternative 5 – Recommended Alternative (also discussed above):

<https://www.newtonma.gov/home/showpublisheddocument/69410>

Alternative 5 is the same as Alternative 1, except a 1,000-foot buffer is used for all non-residential sensitive uses. Planning Staff recommend this alternative as it limits the possibility of a firearm business to just two areas of the city – part of Route 9 in Chestnut Hill and part of the area near the Waltham border at Rumford Avenue and Riverview Avenue. In this alternative there are fewer locations shown across the city than Alternative 4 (with the larger residential buffer but smaller buffer from all other uses) but within those areas there are an adequate number of buildings located outside of the buffers.

- BU2, BU4, M, LM, MU1 zoning districts
- 150-foot buffer from any property containing a residential use
- 1,000-foot buffer from public and private k-12 schools
- 1,000-foot buffer from any daycare center, preschool, childcare facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library or nursing home

Summary

Planning staff finds that the revised draft ordinance, including the zoning districts and buffers shown in Alternative 5 balance the Constitutional protections for firearms, the Police Department's desire to have firearm businesses be as visible as possible, and the community and City Council's desire to restrict firearm businesses as much as possible from sensitive uses. It is unlikely that further zoning or buffer restrictions would withstand a legal challenge. The recommended proposal draws from ordinances and best practices from across the country and if adopted, would be the most robust firearm zoning ordinance in the region. It also is still only a starting point, and any firearm business seeking to locate in Newton would still require a Special Permit. As part of the Special Permit process the City Council would hold at least one public hearing, would have the ability to ask for more specific studies and analysis, and would have the discretion to deny an application if it did not meet the required criteria or add conditions to any potential approval of an application.

Next Steps

A public hearing will be held by the Zoning and Planning Committee at 7 p.m. on May 10, 2021.

ATTACHMENT A:	Proposed Draft Firearm Business Ordinance Redline
ATTACHMENT B:	Proposed Draft Firearm Business Ordinance Clean
ATTACHMENT C:	Firearm Frequently Asked Questions – May 6, 2021

Section 4.4. ALLOWED USES

4.4.1. Business, Mixed Use & Manufacturing Districts

Business, Mixed Use & Manufacturing Districts	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition/ Listed Standard
Firearm Business	--	SP	--	SP	--	SP	--	--	--	SP	SP	Sec. 6.10.4
Firing Range	--	SP	--	SP	--	SP	--	--	--	SP	SP	Sec. 6.10.4
Gunsmith	--	SP	--	SP	--	SP	--	--	--	SP	SP	Sec. 6.10.4

6.10.4. FIREARM BUSINESS USES

A. **Purpose.** To establish criteria for the establishment of Firearm Business Uses in the City that address safety concerns in operations of such businesses and the potential disruption of peace and quiet enjoyment of the community. This Sec. 6.10.4 provides for separation between Firearm Business Uses and certain uses enumerated herein to maximize protection of public health, safety, and welfare.

B. **Definitions.**

Ammunition. Cartridges or cartridge cases, primers (igniter), bullets, tear gas cartridges, or propellant powder designed for use in any Firearm.

Firearm. Any device designed or modified to be used as a weapon capable of firing a projectile using an explosive charge as a propellant, including but not limited to a gun, pistol or rifle.

Firearm Accessory. Any device designed, modified or adapted to be inserted into or affixed onto any Firearm to enable, alter or improve the functioning or capabilities of the Firearm or to enable the wearing or carrying about one's person of a Firearm.

Firearm Business Uses. Any of the following uses:~~shall include the following:~~

1. **Firearm Dealer Business.** A retail or wholesale operation involving the purchase or sale of Firearms, Ammunition, and/or Firearm Accessories.
2. **Firing Range.** A commercial facility designed for Firearm(s) training and/or shooting practice.
3. **Gunsmith.** Any retail operation involving the repairing, altering cleaning, polishing, engraving, blueing or performing of any mechanical operation on any Firearm.

C. **Firearm Business Uses not allowed as-of-right.** Firearm Business Uses are not included within the definition of retail sales or services, manufacturing, or any other lawful

business permitted as of right or by special permit as provided in this Chapter.

D. **Firearm Business Uses allowed by special permit.** Use of land, buildings or structures for a Firearm Business Use, Firing Range, or Gunsmith shall be allowed only by special permit in the districts specified in Sec. 4.4.1 subject to the requirements and criteria of this Sec. 6.10.4.

E. **Minimum criteria and limitations on approval.**

1. A Firearm Business ~~Uses, Firing Range, or Gunsmith~~ shall not be located within a radius of 150 feet from any property containing a residential ~~property line~~ use.
2. Firearm Business Uses shall not be located within 1,000 feet of any private or public k-12 school.

~~3.~~ Firearm Business Uses shall not be located within 1,000 feet of any daycare center, preschool, child-care facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library, nursing home, or an existing ~~another~~ Firearm Dealer or Business, Firing Range at another location, or Gunsmith, unless

~~4.3.~~ All distances in this Section shall be measured in a straight line from any point on the building containing the ~~the nearest property line of the~~ proposed Firearm Business Use, Firing Range, or Gunsmith to the nearest property line of any of the designated uses set forth herein.

~~5.4.~~ In appropriate circumstances, the City Council may grant a special permit for a Firearms Business Use even if the location of the proposed use does not comply with the buffer requirements set forth in Sec. 6.10.4.E.1-3 herein, but only upon a finding that the proposed location the City Council finds that such Firearm Business, Firing Range, or Gunsmith is sufficiently buffered by existing conditions such that the uses enumerated in paragraph Sec. 6.10.4.E.1-3 ~~se facilities or uses~~ will not be adversely impacted by the Firearm Business Use.

~~6.5.~~ A Firearm Business ~~Uses, Firing Range, or Gunsmith~~ shall obtain and maintain all necessary Federal, State and other required local approvals and licenses prior to beginning operations.

~~7.6.~~ A Firearm Business ~~Uses, Firing Range, or Gunsmith~~ shall comply with all applicable Federal, State and local laws and regulations in the operation their business.

~~8.7.~~ A special permit granted by the City Council authorizing the establishment of a Firearm Business ~~Use, Firing Range, or Gunsmith~~ shall be valid only for the registered entity to which the special permit was issued, and only for the lot on which the Firearm Business Use, Firing Range, or Gunsmith has been authorized by the special permit.

~~9.8.~~ No graphics, symbols or images of Firearms, Ammunition, or Firearm Accessories shall be displayed or clearly visible from the exterior of ~~the~~ Firearm Business Uses, Firing Range, or Gunsmith. The City Council may impose additional restrictions on signage to mitigate impact on the immediate neighborhood.

~~10.9.~~ No Firearm Business ~~Use, Firing Range, or Gunsmith~~ shall be located within a building containing a residential use.

~~11.10.~~ A Firearm Business shall be located indoors within a fully enclosed building.

~~12.11.~~ The hours of operation for a Firearm Business Use shall not adversely impact nearby uses. The hours of operation shall be set by the City Council as a condition of the Special Permit, but in no case shall any Firearm Business Use be open before 9:00 a.m. or remain open after 9:00 p.m. Uses shall not be open to the public between the hours of 11:30 p.m. and 6:00 a.m. The City Council may, as a special permit condition, further limit the hours of operation of a Firearms Business Use to mitigate any adverse impacts on nearby uses.

12. A special Permit for a Firearm Business ~~Use, Firing Range, or Gunsmith~~ shall not be granted if such business is owned by or to be managed by any person or persons convicted of violating the provisions of G.L. c. 140, §§ 122B, 130, 131N, or similar laws in other states.

13. All Firearm Business Uses shall submit a security plan to the Newton Police Department for review and approval. The plan must include, but not be limited to, the following:

- a. Proposed provisions for security.
- b. The physical layout of the interior.
- c. After hours storage of all Firearms in locked containers or by otherwise securing the Firearms with tamper-resistant mechanical locks.
- d. The number of employees.

14. All Firearm Business Uses shall submit an operations and management plan to the Newton Police Department for review and approval.

15. All Firearm Business Uses shall conduct criminal background checks for all employees in accordance with state law.

16. No persons under the age of 18 shall have access into or within a Firearms Business Use, with the sole exception that minors age 14 and older may access a Firearms Dealer accompanied by an adult.

17. Firearms Dealers shall videotape the point of sale of all firearms transactions and maintain videos for six months to deter illegal purchases and monitor employees.

F. **Special permit application and procedure.** The procedural and application requirements of Sec. 7.3 shall apply. In addition to the procedural and application requirements of Sec. 7.3, an application for special permit for a Firearm Business Use shall include, at a minimum, the following information:

1. **Description of Activities:** A narrative providing information about the type and scale of all activities that will take place on the proposed site.
2. **Lighting Analysis:** A lighting plan showing the location of proposed lights on the building and the lot and a photometric plan showing the lighting levels.
3. **Context Map:** A map depicting all properties and land uses within a minimum 1,000 foot radius of the proposed lot, ~~whether such uses are located in the City or within~~

~~surrounding communities, including but not limited to all educational uses, daycare, preschool and afterschool programs.~~ The context map shall include the measured distance to all uses described in Sec. 6.10.4.E.1 paragraph E.1 above.

4. **Description of Ownership, Management, and Employees:** The name and address of the legal owner of the establishment. The name and address of all persons having any legal, beneficial, equitable, or security interests in the use. In the event that a corporation, partnership, trust or other entity is listed, the name, and address of every person who is an officer, shareholder, member, manager, or trustee of the entity must be listed. The name and address of the manager(s) and assistant manager(s).

3.5.Comprehensive Signage Plan.

- G. **Special Permit Criteria.** In granting a special permit for a Firearm Business Use, Firing Range, or Gunsmith, in addition to finding that the general criteria for issuance of a special permit are met, the City Council shall find that the following criteria are met:

1. Criteria for all Firearm Business Uses:

- a. The lot is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the lot.

~~a.b.~~ The establishment will have adequate and safe storage, security, and a lighting system.

~~b.c.~~ Loading, refuse and service areas are designed to be secure and shielded from abutting uses.

~~c.d.~~ The Firearm Business, Firing Range, or Gunsmith establishment is designed to minimize any adverse impacts on abutters.

c. The Firearm Business, Firing Range, or Gunsmith establishment has satisfied all of the conditions and requirements in this section.

2. Additional Criteria for Firing Ranges:

~~d.a.~~ The use will not result in adverse impacts due to noise, hazardous materials or air quality.

- H. **Severability.** If any portion of this section is ruled invalid, such ruling will not affect the validity of the remainder of the section.

Section 4.4. ALLOWED USES

4.4.1. Business, Mixed Use & Manufacturing Districts

Business, Mixed Use & Manufacturing Districts	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition/ Listed Standard
Firearm Business	--	SP	--	SP	--	--	--	--	--	SP	--	Sec. 6.10.4
Firing Range	--	SP	--	SP	--	--	--	--	--	SP	--	Sec. 6.10.4
Gunsmith	--	SP	--	SP	--	--	--	--	--	SP	--	Sec. 6.10.4

6.10.4. FIREARM BUSINESS USES

A. **Purpose.** To establish criteria for the establishment of Firearm Business Uses in the City that address safety concerns in operations of such businesses and the potential disruption of peace and quiet enjoyment of the community. This Sec. 6.10.4 provides for separation between Firearm Business Uses and certain uses enumerated herein to maximize protection of public health, safety, and welfare.

B. **Definitions.**

Ammunition. Cartridges or cartridge cases, primers (igniter), bullets, tear gas cartridges, or propellant powder designed for use in any Firearm.

Firearm. Any device designed or modified to be used as a weapon capable of firing a projectile using an explosive charge as a propellant, including but not limited to a gun, pistol or rifle.

Firearm Accessory. Any device designed, modified or adapted to be inserted into or affixed onto any Firearm to enable, alter or improve the functioning or capabilities of the Firearm or to enable the wearing or carrying about one's person of a Firearm.

Firearm Business Use. Any of the following uses:

1. **Firearm Dealer.** A retail or wholesale operation involving the purchase or sale of Firearms, Ammunition, and/or Firearm Accessories.
2. **Firing Range.** A commercial facility designed for Firearm(s) training and/or shooting practice.
3. **Gunsmith.** Any retail operation involving the repairing, altering cleaning, polishing, engraving, blueing or performing of any mechanical operation on any Firearm.

C. **Firearm Business Uses not allowed as-of-right.** Firearm Business Uses are not included within the definition of retail sales or services, manufacturing, or any other lawful

business permitted as of right or by special permit as provided in this Chapter.

D. Firearm Business Uses allowed by special permit. Use of land, buildings or structures for a Firearm Business Use shall be allowed only by special permit in the districts specified in Sec. 4.4.1 subject to the requirements and criteria of this Sec. 6.10.4.

E. Minimum criteria and limitations on approval.

1. Firearm Business Uses shall not be located within a radius of 150 feet from any property containing a residential use.
2. Firearm Business Uses shall not be located within 1,000 feet of any private or public k-12 school.
3. Firearm Business Uses shall not be located within 1,000 feet of any daycare center, preschool, child-care facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes, library, nursing home, or an existing Firearm Dealer or Firing Range at another location. All distances in this Section shall be measured in a straight line from any point on the building containing the proposed Firearm Business Use to the nearest property line of any of the designated uses set forth herein.
4. In appropriate circumstances, the City Council may grant a special permit for a Firearms Business Use even if the location of the proposed use does not comply with the buffer requirements set forth in Sec. 6.10.4.E.1-3 herein, but only upon a finding that the proposed location is sufficiently buffered by existing conditions such that the uses enumerated in paragraph Sec. 6.10.4.E.1-3 will not be adversely impacted by the Firearm Business Use.
5. Firearm Business Uses shall obtain and maintain all necessary Federal, State and other required local approvals and licenses prior to beginning operations.
6. Firearm Business Uses shall comply with all applicable Federal, State and local laws and regulations in the operation their business.
7. A special permit granted by the City Council authorizing the establishment of a Firearm Business Use shall be valid only for the registered entity to which the special permit was issued, and only for the lot on which the Firearm Business Use has been authorized by the special permit.
8. No graphics, symbols or images of Firearms, Ammunition, or Firearm Accessories shall be displayed or clearly visible from the exterior of Firearm Business Uses. The City Council may impose additional restrictions on signage to mitigate impact on the immediate neighborhood.
9. No Firearm Business Use shall be located within a building containing a residential use.
10. A Firearm Business shall be located indoors within a fully enclosed building.
11. The hours of operation for a Firearm Business Use shall not adversely impact nearby uses. The hours of operation shall be set by the City Council as a condition of the Special Permit, but in no case shall any Firearm Business Use be open before 9:00 a.m. or remain open after 9:00 p.m.

12. A special Permit for a Firearm Business Use shall not be granted if such business is owned by or to be managed by any person or persons convicted of violating the provisions of G.L. c. 140, §§ 122B, 130, 131N, or similar laws in other states.
13. All Firearm Business Uses shall submit a security plan to the Newton Police Department for review and approval. The plan must include, but not be limited to, the following:
 - a. Proposed provisions for security.
 - b. The physical layout of the interior.
 - c. After hours storage of all Firearms in locked containers or by otherwise securing the Firearms with tamper-resistant mechanical locks.
 - d. The number of employees.
14. All Firearm Business Uses shall submit an operations and management plan to the Newton Police Department for review and approval.
15. All Firearm Business Uses shall conduct criminal background checks for all employees in accordance with state law.
16. No persons under the age of 18 shall have access into or within a Firearms Business Use, with the sole exception that minors age 14 and older may access a Firearms Dealer accompanied by an adult.
17. Firearms Dealers shall videotape the point of sale of all firearms transactions and maintain videos for six months to deter illegal purchases and monitor employees.

F. **Special permit application and procedure.** The procedural and application requirements of Sec. 7.3 shall apply. In addition to the procedural and application requirements of Sec. 7.3, an application for special permit for a Firearm Business Use shall include, at a minimum, the following information:

1. **Description of Activities:** A narrative providing information about the type and scale of all activities that will take place on the proposed site.
2. **Lighting Analysis:** A lighting plan showing the location of proposed lights on the building and the lot and a photometric plan showing the lighting levels.
3. **Context Map:** A map depicting all properties and land uses within a minimum 1,000 foot radius of the proposed lot. The context map shall include the measured distance to all uses described in Sec. 6.10.4.E.1 above.
4. **Description of Ownership, Management, and Employees:** The name and address of the legal owner of the establishment. The name and address of all persons having any legal, beneficial, equitable, or security interests in the use. In the event that a corporation, partnership, trust or other entity is listed, the name, and address of every person who is an officer, shareholder, member, manager, or trustee of the entity must be listed. The name and address of the manager(s) and assistant manager(s).
5. **Comprehensive Signage Plan.**

G. **Special Permit Criteria.** In granting a special permit for a Firearm Business Use, in addition to finding that the general criteria for issuance of a special permit are met, the City Council shall find that the following criteria are met:

1. Criteria for all Firearm Business Uses:
 - a. The lot is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the lot.
 - b. The establishment will have adequate and safe storage, security, and a lighting system.
 - c. Loading, refuse and service areas are designed to be secure and shielded from abutting uses.
 - d. The establishment is designed to minimize any adverse impacts on abutters.
 - e. The establishment has satisfied all of the conditions and requirements in this section.
2. Additional Criteria for Firing Ranges:
 - a. The use will not result in adverse impacts due to noise, hazardous materials or air quality.

H. **Severability.** If any portion of this section is ruled invalid, such ruling will not affect the validity of the remainder of the section.

**LAW DEPARTMENT RESPONSES TO CITY COUNCILOR QUESTIONS FROM
ZONING AND PLANNING COMMITTEE MEETING HELD ON APRIL 26, 2021**

May, 6, 2021

Under the proposed zoning, how many votes will be required for the issuance of a Firearm Business Use special permit by the City Council?

All special permits for Firearm Business Uses will require a two-thirds vote of the City Council.

Can the City limit the number of Firearm Business Uses?

An interpretation of state law suggests that the City Council has the authority to limit the number of firearm dealer licenses issued pursuant to state law through adoption of a general ordinance. The Law Department is currently drafting an ordinance for Council review.

Can the City prohibit off-site signage for Firearm Business Uses?

The City only has the authority to regulate signage located within the City. The City's Zoning Ordinance already prohibits non-accessory signs on private property. Signs for businesses are regulated and only permitted on the premises of the business itself. This means that no businesses can have off-site signage in Newton. The City, however, does not have the authority to prohibit a business located in Newton from erecting signage outside of the City.

Can the City limit or prohibit signage on-site at a Firearm Business Use?

The City cannot completely ban signage on site, but the City Council may impose some reasonable limitations as to size and location through its discretionary special permit review process. The proposed ordinance also prohibits the exterior display of graphics, symbols, or images of firearms and ammunition.

Can the City require additional security on-site at a Firearm Business Use? Can the City require firearm purchases be made by appointment only?

Additional requirements have been added to the draft ordinance to address security in greater detail. For example, all applicants must submit a security plan to the Newton Police Department for review and approval and conduct employee background checks in accordance with state law. A required finding has also been added to ensure any Firearm Business Use takes all appropriate safety measures: in order for the City Council to issue a special permit it must first determine that the business has adequate and safe storage, security, and lighting.

As part of the discretionary special permit review process, the City Council has broad authority to impose additional conditions and requirements on the use and operation as necessary to ensure the

business meets the special permit standards. While the proposed zoning ordinance does not require that all Firearm Business Uses operate on an appointment only basis, that is a valid consideration for the City Council to evaluate during the special permit process and require when appropriate.

If a specific provision of the firearm zoning amendment is overturned by a court challenge, will the remainder of the ordinance remain valid?

The draft ordinance does include a “severability provision” that seeks to protect the validity of any portion of the firearm ordinance not specifically ruled invalid.

Can the City tax firearm sales?

The City does not have the authority to impose a local tax on the sale of firearms. Under state law, the City does not have the power to assess taxes unless explicitly authorized by the State Legislature. For example, state law explicitly authorizes the City to collect a local tax option on the retail sale of marijuana. There is no statutory authority permitting the City to assess a local tax on firearm sales.

The current proposed zoning amendment prohibits a Firearm Business Use from opening within a certain buffer to specific land uses, such as childcare facilities. Will those specified land uses be prohibited from locating within the buffer of an existing Firearm Business Use?

No. The proposed restriction against a Firearm Business Use from opening within a certain proximity of other specified uses only applies against the proposed Firearm Business Use at the time it receives a special permit. For example, a childcare facility that wishes to open within the buffer of an existing Firearm Business Use retailer may do so.

Can the City ban firing ranges?

In light of the implications of Constitutional protections and the current legal landscape, it is likely that a complete ban would ultimately be deemed unconstitutional.

Regulation of Firearms Dealers – FAQs

Updated April 23, 2021

How can residents learn about developments concerning firearms dealers in Newton?

The City's Department of Planning & Development Department has created a webpage with relevant information that is updated regularly and can be found by clicking [here](#). This FAQ document is located at the same link and will be updated periodically with the latest information in an effort to remain open and transparent.

ZONING AND REGULATION OF FIREARMS DEALERS

Does Newton have any zoning regulations around firearms dealers?

The City of Newton currently does not have any zoning regulations around firearms dealers. Firearms dealers fall within the general use category of "retail sales" that is currently allowed by right in all Business Use zoning districts, by special permit in the Limited Manufacturing District, and either by right or by special permit – depending on the size of the retail store – in the Mixed Use districts.

What options does Newton have to regulate firearms dealers through zoning?

The City Council has broad authority to regulate all land uses in Newton, including the location of firearms dealers. That said, in light of the nature of the issues and the implications of Constitutional protections, it may be reasonable to expect that the more restrictively firearm sales are regulated, the more likely such regulations will be subject to a court challenge.

What steps are currently being taken by the City to address firearms dealers?

On Friday, April 16, the Mayor and all 24 City Councilors jointly docketed an amendment to the City's zoning ordinance that would restrict all firearms dealers and related uses to the following zoning districts: Business Use 4, Mixed Use 1, Manufacturing, and Light Manufacturing. The proposed amendment also requires all firearm businesses to be approved by special permit by the City Council. It will create specific special permit criteria, including a buffer zone between a firearms dealer and residences and schools. A copy of the text of the proposed zoning amendment will be posted on the Planning Department website [here](#) on Friday, April 23.

What is the City Council process for reviewing the proposed zoning amendments?

It is the role of the City Council, as the City's legislative body, to approve all zoning ordinances and amendments. The review and approval process is dictated by the State Zoning Act, Chapter 40A. In accordance with the required process, the City Council assigned the proposed zoning amendment to the Zoning and Planning Committee (ZAP). The Zoning and Planning Committee will hold a public hearing on the proposed amendment on Monday, May 10, 2021. At the public hearing, the Council will hear input from the public. It will then discuss the draft language, potentially make revisions, and ultimately recommend that matter to the full City Council for a final vote to approve the zoning amendments.

Prior to the opening of the public hearing, ZAP will hold a committee discussion of the proposed zoning amendments at its regularly scheduled meeting on Monday, April 26, 2021. There will not be an opportunity for public comment at that meeting.

If and when the proposed zoning ordinances are passed, will they apply retroactively?

In general, zoning is prospective and would not limit ongoing uses and businesses that are already operating. However, the State Zoning Act, does state that any approved zoning amendment will apply to any use/business that has not commenced prior to the publication of notice of the public hearing for the zoning amendment.

The City Council is providing the first required notice of the May 10 public hearing in the newspaper on Friday, April 23. Practically speaking, if there is a proposed firearm business that has not started operating by that date, it will be subject to the proposed zoning amendments whenever those amendments are passed.

What is the current zoning status of the proposed firearms dealer that is seeking to operate at a location on Washington Street in Newton?

While a firearms dealer is currently an allowed by right use at the current proposed location of 709 Washington Street, the City's Department of Inspectional Services (ISD) still requires new businesses to apply for and receive an occupancy permit before commencing operation in a new location. This review is necessary to ensure the building and the use are in compliance with the City's zoning ordinance, the State building code, and other applicable codes, such as the State fire code.

In addition, when a new business opens at a location that was not previously designed for that type of use (as in this instance the proposed location was previously a dry cleaner) interior improvements or renovations are often necessary and must be undertaken pursuant to a building permit issued by ISD. Recently, ISD learned that extensive interior renovations were being conducted at the proposed location without the benefit of a building permit. After observing the property on April 20, 2021, the Commissioner of ISD issued a Stop Work Order for violations under the State Building Code. As a result, no further construction work can continue at this location until a building permit is applied for and issued by ISD. As of today, ISD has not received any applications for a building permit or an occupancy permit concerning this property. ISD is required by state law to process building permits within 30 days of the filing of an application.

At this time, a firearms dealer cannot begin operating at this location until these issues are resolved. The business owner must apply for and be issued a building permit, the outstanding building code violations must be remedied, and an occupancy permit must be issued before any business can commence operation.

Is a firearms dealer allowed to begin operating after the public notice date of April 23, 2021 but before the zoning amendments are passed?

If the proposed firearms dealer receives all the necessary licenses and approval from local, state, and federal authorities, and also receives all necessary permits and approvals from the City's

Department of Inspectional Services, it may be allowed to operate for a period of time. The dealer, however, will still be subject to the new zoning whenever it is passed and could have to cease operation if the use is no longer allowed at that location. In other words, a firearms dealer could potentially open after the notice of the public hearing but at its own risk of being subject to the later approved zoning amendments.

It is in the news that Salem recently rejected an application for a firearms dealer. Why can't Newton do the same?

The situation in Salem is very different than what Newton currently faces. The proposed firearms dealer in Salem was located in a residential zoning district where retail was not an allowed use and was replacing a nonconforming industrial use. Like Newton and most Massachusetts communities, Salem does not regulate firearms dealers through zoning and treats the use as retail. As a result, the applicant had to apply to the Salem Zoning Board of Appeals for a special permit to change from one nonconforming use (industrial) to another nonconforming use (retail) as neither uses are allowed in that particular residential district. Under its discretionary review, the Salem ZBA denied the request for a special permit. The Salem ZBA vote took place on April 21 and a decision, which may be appealed, has not yet issued.

In contrast, the proposed firearms dealer on Washington Street in Newton constitutes a by right retail use in a business zoning district. The dealer does not require any zoning relief from the City Council or the ZBA. Therefore, under current zoning, there is no opportunity nor basis for the City or the City Council to reject this business. However, under the proposed zoning ordinance, all firearms dealer uses will require a special permit from the City Council, which will allow the City Council to engage in the same discretionary review recently undertaken by Salem ZBA. The proposed ordinance also restricts firearms dealers to certain zoning districts. The proposed firearms dealer on Washington Street will be subject to these zoning changes if the proposed zoning ordinance is adopted.

LICENSING OF FIREARMS DEALERS

What local, state, and federal licenses are required to operate a firearms dealer?

To operate a business as a firearms dealer in MA, the dealer must seek and obtain a federal firearms license (FFL) to purchase firearms from the Bureau of Alcohol, Tobacco and Firearms (ATF) and a separate license to sell firearms from the Chief of Police, as the local licensing authority. The license to sell firearms is authorized by state law, M.G.L. c. 140 § 122, which lays out the criteria that the Chief must follow in reviewing applications for the license. The MA application for the license to sell firearms is also reviewed by the MA Firearms Records Bureau.

What is the local review process for the Newton Chief of Police to issue a firearms dealer license?

The Chief and designees will conduct a background check consisting of a review of reports from the Department of Mental Health, the Board of Probation, the MA Warrant Management System and the National Instant Criminal Background Check System. The applicant is fingerprinted by the Newton Police Department and the fingerprints are reviewed by the MA State Police. The Chief and designees will conduct a site view of the proposed location to ensure that the building is properly alarmed, secured, outfitted with appropriate locked storage containers, and that the windows are appropriately screened to prevent being able to see any firearms from outside of the store. There is no notification or hearing requirement for a license to sell firearms.

Can the Chief of Police deny an application for a license to sell firearms?

The Chief of Police may deny a license to sell firearms if the applicant is prohibited by law to hold the license.

What is the current licensing status of the proposed firearms dealer that is seeking to operate at a location on Washington Street in Newton?

The applicant has met all state and federal statutory requirements and the license is in the process of being issued.

Can the proposed firearms dealer operate at a different location?

A firearms dealer must list a specific address on the application for a license to sell firearms and the license must be exercised at that location. If the dealer would like to move the business to a different location, the dealer must notify the Chief of Police of the new location so that the Chief can conduct a site plan and security review prior to allowing the business to relocate. If the dealer wishes to operate a second location, the dealer must submit a new application for review and approval.

What operating restrictions apply to firearms dealers?

Firearms dealers license holders are held to a series of restrictions and requirements outlined in M.G.L. c. 140 § 123. Among the twenty-one conditions on the license are the following:

- Every item sold must be recorded in a log, which must be made open to inspection by the Chief of Police at any time
- Firearms may not be sold to a person who does not have MA issued License to Carry or a MA issued Federal Identification card
- Dealer is required to verify the license status of purchasers through the state licensing system, MIRCS (MA Instant Record Check System)
- Dealer must display a required placard from the MA Dept of Health about suicide prevention and a separate placard about the storage requirements for firearms in MA
- Dealer may not possess or sell any firearms that are illegal in MA

- Firearms that are stolen from the store must be reported immediately to the Chief of Police and to the MA Criminal Justice Information Services

In addition to the conditions on the license, in MA firearms dealers are also required to demonstrate how to safely load, unload and store handguns, how to operate the handgun's safety devices, and provide specific written safety warnings to purchasers of handguns.

A firearms dealer must perform a CORI background check on prospective employees.

Firearms dealers may not operate out of a residence or dwelling.

What is the oversight role of the Chief of Police?

Dealers are required to have their transaction records open for inspection at all times to the police. In addition, the license holder must provide the Chief with a yearly accounting of sales records.

What firearms may be sold in MA?

The Executive Office of Public Safety and Security (EOPSS) maintains a [list of approved firearms](#) that may be purchased from a duly licensed dealer in MA. The list is updated as needed and includes rosters for Olympic competition firearms, large capacity firearms, formal target shooting firearms and other approved firearms. Handguns must meet all consumer protection regulations including childproofing and protections against accidental discharges. 940 CMR 16.00

Can someone buy firearms online?

Yes, but they may not be delivered directly to the buyer. The firearms must, instead, be delivered to a federal firearms license (FFL) holder who must certify that the firearms are compliant with all applicable MA gun control laws prior to transferring the firearms to the buyer. The transfer of the firearms must take place at the FFL's place of business.

Are Firearms Dealers in MA allowed to sell assault weapons?

Since 1998, Massachusetts has had an assault weapons ban in place that prohibits the sale, transfer or possession of assault weapons, including some semi-automatic weapons. In 2016, the MA Attorney General issued a [Notice on Enforcement](#) which provides a description and list of banned firearms. Firearms dealers must comply with all requirements of the law and violations will result in a revocation of the license to sell firearms.

What safety and security measures are a firearms dealer required to take at its business place?

Dealers and gun owners are all required to secure their firearms either by keeping it in a locked container or by equipping the firearm with a tamper-proof locking mechanism that renders the firearm inoperable when the firearms are not under their control.

A firearms dealer is also prohibited from displaying firearms in the window of a store.

Who makes sure that a dealer has the proper security measures in place?

The Massachusetts Gun Control Advisory Board, along with the Executive Office of Public Safety and Security (EOPPS), provide guidance on appropriate safety and security measures to support and implement the gun control laws in MA. The Newton Chief of Police, as the local licensing authority, investigates and enforces the gun control laws to ensure that all required safety measures are in place for all license holders.

How often does the Chief of Police perform inspections of firearms dealerships?

The Chief of Police is required to perform annual inspections of a dealer's sales records but is permitted to conduct inspections at any time.

Can the City of Newton completely ban guns in Newton?

No. Under the current status of federal law, possession of firearms is protected by the Second Amendment and any effort on the part of the City of Newton to ban the possession of firearms would be struck down by a Court as unconstitutional.

What are some other resources on gun control in MA?

License to sell firearms: [M.G.L. c. 140 § 122](#)

License to sell ammunition – [M.G.L. c. 140 § 122B](#)

Conditions of Licenses – [M.G.L. c. 140 § 123](#)

Consumer Protection Regulations for the sale of handguns – [940 CMR 16.00](#)

Information on the MA Assault Weapons Ban – [MA FAQs about the Assault Weapons Ban](#)

CITY OF NEWTONIN CITY COUNCIL

ORDINANCE NO. B-78

June 2, 2021

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2017, as amended, be and are hereby further amended with respect to **Chapter 30 ZONING** as follows:

1. **INSERT** after the last row "Microbusiness" in the "Restricted Uses" portion of the Table appearing in Sec. 4.4.1 the following new rows:

Business, Mixed Use & Manufacturing Districts	BU1	BU2	BU3	BU4	BU5	MU1	MU2	MU3	MU4	M	LM	Definition/ Listed Standard
Firearm Business	--	SP	--	SP	--	--	--	--	--	SP	--	Sec. 6.10.4
Firing Range	--	SP	--	SP	--	--	--	--	--	SP	--	Sec. 6.10.4
Gunsmith	--	SP	--	SP	--	--	--	--	--	SP	--	Sec. 6.10.4

2. **INSERT** after **Sec. 6.10.3 REGISTERED MARIJUANA USE.** a new **Sec. 6.10.4. FIREARM BUSINESS USES** as follows:

6.10.4. FIREARM BUSINESS USES

- A. **Purpose.** To establish criteria for the establishment of Firearm Business Uses in the City that address safety concerns in operations of such businesses and the potential disruption of peace and quiet enjoyment of the community. This Sec. 6.10.4 provides for separation between Firearm Business Uses and certain uses enumerated herein to maximize protection of public health, safety, and welfare.

B. Definitions.

Ammunition. Cartridges or cartridge cases, primers (igniter), bullets, tear gas cartridges, or propellant powder designed for use in any Firearm.

Firearm. Any device designed or modified to be used as a weapon capable of firing a projectile using an explosive charge as a propellant, including but not limited to a gun, pistol or rifle.

Firearm Accessory. Any device designed, modified or adapted to be inserted into or affixed onto any Firearm to enable, alter or improve the functioning or capabilities of the Firearm or to enable the wearing or carrying about one's person of a Firearm.

Firearm Business Use. Any of the following uses:

1. **Firearm Dealer.** A retail or wholesale operation involving the purchase or sale of Firearms, Ammunition, and/or Firearm Accessories.
2. **Firing Range.** A commercial facility designed for Firearm(s) training and/or shooting practice.
3. **Gunsmith.** Any retail operation involving the repairing, altering cleaning, polishing, engraving, blueing or performing of any mechanical operation on any Firearm.

C. Firearm Business Uses not allowed as-of-right. Firearm Business Uses are not included within the definition of retail sales or services, manufacturing, or any other lawful business permitted as of right or by special permit as provided in this Chapter.

D. Firearm Business Uses allowed by special permit. Use of land, buildings or structures for a Firearm Business Use shall be allowed only by special permit in the districts specified in Sec. 4.4.1 subject to the requirements and criteria of this Sec. 6.10.4.

E. Minimum criteria and limitations on approval.

1. Firearm Business Uses shall not be located within a radius of 150 feet from any property containing a residential use.
2. Firearm Business Uses shall not be located within 1,000 feet of any private or public k-12 school.
3. Firearm Business Uses shall not be located within 1,000 feet of any daycare center, preschool, child-care facility, college or university, public park intended for passive or active recreation, playground, land or structures used for religious purposes,

library, nursing home, or an existing Firearm Dealer or Firing Range at another location, whether such firearm business use is located within or without the City's boundaries. All distances in this Section shall be measured in a straight line from any point on the building containing the proposed Firearm Business Use to the nearest property line of any of the designated uses set forth herein.

4. In appropriate circumstances, the City Council may grant a special permit for a Firearms Business Use even if the location of the proposed use does not comply with the buffer requirements set forth in Sec. 6.10.4.E.1-3 herein, but only upon a finding that the proposed location is sufficiently buffered by existing conditions such that the uses enumerated in paragraph Sec. 6.10.4.E.1-3 will not be adversely impacted by the Firearm Business Use.
5. Firearm Business Uses shall obtain and maintain all necessary Federal, State and other required local approvals and licenses prior to beginning operations.
6. Firearm Business Uses shall comply with all applicable Federal, State and local laws and regulations in the operation of their business.
7. A special permit granted by the City Council authorizing the establishment of a Firearm Business Use shall be valid only for the registered entity to which the special permit was issued, and only for the lot on which the Firearm Business Use has been authorized by the special permit.
8. No graphics, symbols or images of Firearms, Ammunition, or Firearm Accessories shall be displayed or clearly visible from the exterior of Firearm Business Uses. The City Council may impose additional restrictions on signage to mitigate impact on the immediate neighborhood.
9. No Firearm Business Use shall be located within a building containing a residential use.
10. A Firearm Business Use shall be located indoors within a fully enclosed building.
11. The hours of operation for a Firearm Business Use shall not adversely impact nearby uses. The hours of operation shall be set by the City Council as a condition of the Special Permit, but in no case shall any Firearm Business Use be open before 10:00 a.m. or remain open after 7:00 p.m.
12. A special Permit for a Firearm Business Use shall not be granted if such business is owned by or to be managed by any person or persons convicted of violating the

provisions of G.L. c. 140, §§ 122B, 130, 131N, or similar laws in other states.

13. All Firearm Business Uses shall submit a security plan to the Newton Police Department for review and approval. The plan must include, but not be limited to, the following:

- a. Proposed provisions for security.
- b. The physical layout of the interior.
- c. After hours storage of all Firearms in locked containers or by otherwise securing the Firearms with tamper-resistant mechanical locks.
- d. The number of employees.

14. All Firearm Business Uses shall submit an operations and management plan to the Newton Police Department for review and approval.

15. All Firearm Business Uses shall conduct criminal background checks for all employees in accordance with state law.

16. No persons under the age of 18 shall have access into or within a Firearms Business Use, with the sole exception that minors age 14 and older may access a Firearms Dealer accompanied by the minor's parent or guardian.

17. Firearms Dealers shall videotape the point of sale of all firearms transactions and maintain videos for six months to deter illegal purchases and monitor employees.

F. **Special permit application and procedure.** The procedural and application requirements of Sec. 7.3 shall apply. In addition to the procedural and application requirements of Sec. 7.3, an application for special permit for a Firearm Business Use shall include, at a minimum, the following information:

1. **Description of Activities:** A narrative providing information about the type and scale of all activities that will take place on the proposed site.
2. **Lighting Analysis:** A lighting plan showing the location of proposed lights on the building and the lot and a photometric plan showing the lighting levels.
3. **Context Map:** A map depicting all properties and land uses within a minimum 1,000 foot radius of the proposed lot. The context map shall include the measured

distance to all uses described in Sec. 6.10.4.E.1-3 above.

4. **Description of Ownership, Management, and Employees:** The name and address of the legal owner of the establishment. The name and address of all persons having any legal, beneficial, equitable, or security interests in the establishment. In the event that a corporation, partnership, trust or other entity is listed, the name, and address of every person who is an officer, shareholder, member, manager, or trustee of the entity must be listed. The name and address of the manager(s) and assistant manager(s).

5. **Comprehensive Signage Plan.**

- G. **Special Permit Criteria.** In granting a special permit for a Firearm Business Use, in addition to finding that the general criteria for issuance of a special permit are met, the City Council shall find that the following criteria are met:

1. **Criteria for all Firearm Business Uses:**

- a. The lot is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the lot.
- b. The establishment will have adequate and safe storage, security, and a lighting system.
- c. Loading, refuse and service areas are designed to be secure and shielded from abutting uses.
- d. The establishment is designed to minimize any adverse impacts on abutters or pedestrians.
- e. The location and operating characteristics of the proposed use promotes, and will not be detrimental to, the public health, safety and welfare of the neighborhood, which may extend into an adjacent municipality, or the City.
- f. The establishment has satisfied all of the conditions and requirements in this section.

2. **Additional Criteria for Firing Ranges:**

- a. The use will not result in adverse impacts due to noise, hazardous materials or air quality.

H. **Severability.** If any portion of this section is ruled invalid, such ruling will not affect the validity of the remainder of the section.

Approved as to legal form and character:

Alissa O. Giuliani

ALISSA O. GIULIANI
City Solicitor

Under Suspension of Rules
Readings Waived and Approved by Voice Vote
23 Yeas 1 Nays (Councilor Gentile)

EXECUTIVE DEPARTMENT

Nadia Khan

(SGD) NADIA KHAN
Acting City Clerk

Approved:

Ruthanne Fuller

(SGD) RUTHANNE FULLER
Mayor

Date: 6/3/2021

From: [Maggie Abruzese](#)
To: [Planning](#); [Lee Newman](#); [Alexandra Clee](#)
Cc: [psa@westonpatrick.com](#); [adamjblock@kw.com](#); [mj@jacobs-thomas.com](#); [jeannemcknight@comcast.net](#); [nespada@studioenee.com](#); [jabruzese@gmail.com](#)
Subject: Request to consider zoning amendment re: child care centers
Date: Tuesday, July 6, 2021 3:26:47 PM
Attachments: [DRAFT zoning amendment child care centers.docx](#)

Dear Members of the Planning Board and Ms. Newman,

I attended last week's planning board meeting and I understand that you will be considering changes to the zoning bylaws at a meeting on Monday July 12. I am writing to ask if you would consider changes to the zoning bylaws around the issue of daycare centers in residential neighborhoods in the agenda of your meeting on July 12, 2021 at 8:00 a.m.

The project at 1688 Central has made it clear that putting commercial daycare centers in residential neighborhoods has the potential to have detrimental effects on those neighborhoods by reason of their size, traffic, noise, outside activities and the like. Needham has the ability through its current zoning bylaws to regulate these concerns. However, all parties – developers, neighbors, the town of Needham – would benefit from having explicit language in the zoning bylaw to address these concerns more specifically so that all parties can know ahead of time what reasonable regulations Needham will impose on commercial child care facilities. This will allow all parties to plan accordingly.

Needham is not the first town to struggle with the uncertainties created by the Dover Amendment with regard to commercial child care centers and many have found solution in establishing additional zoning bylaws. Wellesley has zoning bylaws which address the issues clearly. <https://wellesleyma.gov/281/Zoning-Bylaws-Map> beginning at page 13 of 238.

The changes suggested in the attached draft amendment are based on Wellesley's zoning bylaws. There are a couple of things to note about the suggested changes:

- They reiterate that a child care center has to meet the dimensional zoning requirements of the district it is in, unless it is a legally pre-existing non-conforming structure.
- They utilize the definition of child care center that is contained in the Dover Amendment. This narrows the scope of these amendments to child care centers attempting to use paragraph 3 of the Dover Amendment to build in residential neighborhoods.
- They provide for adequate space per child for outdoor play so that there is enough land utilized to absorb the noise and detrimental effects of daycare use to the neighbors.
- They require off street parking for every employee at the center so that employees will not be parking on neighboring streets.
- They require one space per three children for drop off and pick up to mitigate the effects of traffic on the neighborhood and prevent cars from spilling beyond the subject property.
- They limit the floor area of a center in a residential area to 2500 square feet. This mitigates the detrimental effects of a commercial daycare in a residential neighborhood by bringing less traffic, parking, noise, outside activities, etc.

The proposed draft amendment is attached.

Thank you.

Sincerely,

Maggie and Joe Abruzese

30 Bridle Trail Rd

DRAFT

3.2 Schedule of Use Regulations

3.2.1 Uses in the Rural Residence-Conservation, Single Residence A, Single Residence B, General Residence, Apartment A-1, Apartment A-2, Apartment A-3, Institutional, Industrial and Industrial-1 Districts.

The following schedule of use regulations shall apply in the RRC, SRA, SRB, GR, A-1, 2 & 3, I, IND and IND-1 districts.

[...]

<u>USE</u>	<u>RRC SRA</u>	<u>SRB</u>	<u>GR</u>	<u>A-1, 2 & 3</u>	<u>I</u>	<u>IND</u>	<u>IND- 1</u>
<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
School – public, religious, sectarian or denominational	Y	Y	Y	Y	Y	Y	Y
Public library and museum and philanthropic institution	Y	Y	Y	Y	Y	Y	Y
Public park and playground and municipal structure including a water tower and reservoir	Y	Y	Y	Y	Y	Y	Y
Public passenger station	Y	Y	Y	Y	Y	Y	Y
Child care facility (defined to mean a “day care center” or a “school aged child care program,” as those terms are defined in Section 1A of Chapter 15D)	Y*	Y*	Y*	Y*	Y	Y	Y

Other private school, nursery, or kindergarten	SP	SP	SP	SP	SP	SP	SP
Convalescent or nursing home, hospital	SP	SP	SP	SP	SP	SP	SP
Cemetery	SP	SP	SP	SP	SP	SP	SP
Private club not conducted as a business	SP	SP	SP	SP	SP	SP	SP

* Provided that:

- a. The structure containing such facility and the lot containing such facility shall meet the dimensional zoning requirements for the district in which the structure is located unless the structure is a legally pre-existing, non-conforming building or structure;
- b. The structure containing such facility and the facility itself shall meet all applicable local, state and federal requirements;
- c. Fenced outdoor play area, subject to all screening requirements in these bylaws, shall be provided at a ratio of not less than 75 square feet for every child at play, exclusive of the area occupied by play equipment;
- d. One off-street parking space shall be provided for every paid and unpaid employee, not resident on the premises, so that there is no on-street parking by employees;
- e. Off-street drop off and pick up area shall be provided at a ratio of one space for every 3 children, unless drop off and pick up area can lawfully be provided on a street abutting the lot; and;
- f. A child care facility located within a Single Residence District shall not exceed a floor area of 2,500 square feet.

NEEDHAM PLANNING BOARD MINUTES

March 16, 2021

The Needham Planning Board Virtual Meeting using Zoom was remotely called to order by Jeanne McKnight, Chairman, on Tuesday, March 16, 2021, at 7:15 p.m. with Messrs. Alpert, Jacobs, Owens and Block, as well as Planning Director, Ms. Newman and Assistant Planner, Ms. Clee.

Ms. McKnight took a roll call attendance of the Board members and staff. 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 includes a public hearing and there will be an opportunity for public comment. If any votes are taken at the meeting the vote will be conducted by roll call.

Board of Appeals – March 18, 2021

Allen Douglas and Christine Lachkey – 238 Highland Avenue

Ms. McKnight stated this is the Montessori School. They want to take over the vacant space next door and increase students and staff. There will be improvements in 2 parking areas. There will be a decrease in the number of parking spaces.

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

VOTED: "No comment."

Melissa Gale/The Cookie Monstah Company – 1257 Highland Avenue

Ms. McKnight noted Stacy's closed recently and Cookie Monstah wants to go in. There is a request for a waiver of parking.

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

VOTED: "No comment."

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

VOTED: to automatically continue the meeting to 3/23/21 at 7:00 p.m. with the same zoom ID number if any technical difficulties arise that keep the Planning Board from continuing this meeting tonight and authorize the Vice-Chairman to continue the meeting if the Chairman has technical difficulties.

Public Hearing:

7:30 p.m. -- Article 1: Amend Zoning By-Law --Highway Commercial 1 Zoning District **Article 2: Amend Zoning By-Law – Highway Commercial 1 Zoning District Schedule of** **Permitted Special Permit Uses** **Article 3: Amend Zoning By-Law – Map Change to Highway Commercial 1**

Ms. McKnight noted this will create a new zone called Highway Commercial 1 Zoning District. It will place the Muzi property and Channel 5 property in this new district.

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

VOTED: to waive the reading of the public hearing notice.

Ms. McKnight turned the hearing over to Mr. Block. Mr. Block stated this is a revised proposal. It is approximately 15 acres in the Industrial District area. The district includes Muzi Ford and Channel 5. The new district is bounded by 128 to the east, Highland Avenue to the south, Gould Street to the west and the MBTA right-of-way to the north.

Natasha Espada, of Studio ENEE, consultant to the Planning Board, stated she looked at how to continue the commercial corridor into this site. The corner of the site is flat but goes to a big slope down in the back. She looked at the density of the town and the corridor, which runs from Chestnut Street to Newton. All the buildings are similar in size at 2½ to 3 stories and larger across the highway. This would create a continuity of the street. She showed the train and bus lines and noted there is no public transportation at this site.

Mr. Block stated they looked at the underutilized site. The goal is to unlock a higher and better use that makes a stronger contribution to the town while respecting an area that abuts residential. He noted there was a previous zoning proposal that went to Town Meeting in October 2019. The proposal passed by a majority but failed to pass by a super majority to affect the change. He stated the Needham Heights Neighborhood Association had a community meeting, and a working group was created that consisted of members of the Finance Committee, the Select Board and the Planning Board. The proposal was revised based on feedback given. Three changes were made that reduced the scope and scale of the development, reduced the maximum heights and added a multi-family residential development option ~~was included~~.

Mr. Block showed the uses allowed by right and by special permit. Those uses will continue to be allowed. He noted the red text shows currently-allowed uses not carried forward into the new proposal, the green text shows new uses proposed in the 2019 proposal and the pink text shows the new uses now proposed. He noted the size of retail has been reduced to 5,750 feet by right and 10,000 square feet by special permit. Retail will serve as amenities for the immediate residents and occupants of the buildings. There will be a maximum of 240 residential units with a minimum of 40% and a maximum of 70% of 1-bed~~room~~ units. There will be 12½% affordable units.

~~He~~Mr. Block highlighted the dimensional changes between the 2019 proposal and the current proposal.

~~Mr. Block~~ He noted the 2019 proposal had an FAR of 1.75 by special permit. That FAR has been reduced to 1.35 based on feedback received. The maximum height proposed in 2019 was 70 feet or 5 stories by right and 6 stories by special permit. The new proposal has reduced the height to 56 feet with a maximum 4 stories by right and 70 feet maximum by special permit. He ~~summarized/reviewed~~ the proposed dimensional requirements for height and FAR. The FAR is 1.0 by right and 1.35 by special permit with a 35-foot maximum height by right and 48-foot maximum height by special permit.

Mr. Block noted with the current zoning there is no minimum open space requirement and no rear setback requirement for parking garages. The new proposal has a 20% minimum open space requirement and a setback for parking garages. He explained the developer must ~~obtain/submit~~ a Site Plan Special Permit for any building greater than 10,000 square feet. This ensures the Planning Board has control. While a Site Plan Special Permit project cannot be denied, the Planning Board can impose reasonable terms and conditions. If the developer applies for a Special Permit for use the Planning Board has much greater discretion to alter or even deny. The Planning Board will post a notice and give notice to abutters. He explained the process of the public hearing.

Ms. Espada showed sample site plans. She then showed the existing 3-story building on the Channel 5 site and the 2-story building on the Muzi site. She created and showed examples of a 1.0 FAR as of right and a 1.35 FAR by special permit with a single building and multiple buildings. 20% of the site is shown as green space and she showed the current curb cuts, which will remain. She showed views from all angles. She pointed out the 20-foot buffer around the entire site with landscaping for all the options. Ms. Espada discussed the special permit zoning and showed options with single and multiple buildings. The parking and building setback is 200 feet from Gould and Highland with landscaping all around.

Rebeca Brown, of Greenman Pederson, Inc., evaluated the maximum traffic impacts that could result with a 1.35 FAR and any traffic mitigations that would be required. She noted the study area and the intersection closest to the site that would be impacted. She stated the developer would be required to do a traffic analysis once there is a project for this site. A considerable amount of data was already collected prior to Covid 19. A 2015 study was done by BETA for rezoning of this site previously. A 2019 post construction traffic study was done for the 128 Add-A-Lane project which included Gould Street and Highland Avenue. She noted the traffic volume decreased 13 to 15% post construction. During construction, Exits 18 to 20 were under construction and one ramp was closed. There was a detour from Hunting to Highland during~~for~~ the 2015 study. There was a decrease in traffic once the construction was completed with a 43% drop in traffic on Hunting Road. Traffic increased 7 to 11% in this area post construction.

Ms. Brown stated she used the 2015 data for areas where there was no 2019 information, ~~for~~ as it represented a worst-case scenario. She grew out to a 10-year condition using a 1% growth rate. She looked at the volume prior to the start of Add-A-Lane and compared it to the 2019 data collected prior to Covid. She also looked at a worst-case scenario for most traffic trip generation. She showed existing trips, proposed trips and the net increase using a worst-case scenario. She did not include pedestrians or bicyclists. She also looked at traffic management. Ms. McKnight stated residential is included in the mix of uses and asked if that makes it better or worse. Ms. Brown stated she had been asked to look at that with 240 residences. There is a significant drop in total trips generated. The a.m. and p.m. trips are revised and it actually helps to even out traffic. She looked at journey to work trips, existing travel patterns and building density. All 3 models have similar trip generations. There is about 40% of traffic using residential streets and there is 60% to and from the highway. Ms. Brown described the study area intersections with 2030 level of services, no build versus build. The Central Avenue at Gould intersection is a level of service F now. Any increase in traffic would make it worse. That intersection is already being prioritized for improvements by the town. She focused on the 2 site drives and the Highland and Hunting intersection that would be level E or F. Both are being looked at by Mass DOT.

Ms. Brown looked at mitigations that would be required. The 2 site drives would need to be widened for 2 lanes each side. A traffic signal would be needed at the farther drive. Gould Street would need to be widened from the site drives to Highland Avenue. There would be 2 left turns, a dedicated through lane and a right turn lane. Highland Avenue would need to be widened for an exclusive right lane and a dedicated right lane to the site drives. There would be dedicated left turns to each of the 2 site drives. There are no proposed off-site property takings on Hunting or Highland. The widening would be into the site so it would be a taking from the property itself and would not push the setbacks into the site UNCLEAR. This would require a signal easement on Gould Street. She showed the impacts on the area. She noted, with improvements, all study area intersections return to Level E or better, ~~noting that~~ ~~this~~ includes a worst-case scenario with a greater mix of uses.

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Select Board Member Marianne Cooley discussed the fiscal impact. She noted they listened to the townspeople who want a gateway and do not want a warehouse. This is a change and change is difficult. She stated they are all there to help and do the best by Needham. She showed the fiscal impact with the assessed value and the net revenue change. She noted the net tax revenue would be \$78.5 million for use by the town, with no residential use. There would be a \$52 million net change with mixed multi-use ~~and including~~ residential.

Mr. Block stated, on a procedural note, the zoning proposal will appear at Town Meeting with 2 Articles. There will be one main article and the other is a map change. There will need to be a 2/3 majority vote to adopt. The Board has listened to constructive feedback, reduced the size of retail, reduced the scale and scope of development, reduced maximum heights and included multi-family residential use. Traffic mitigations are possible and can improve the flow of traffic. Mr. Block noted the net revenue annually will alleviate a significant tax burden for taxpayers. He then opened the meeting for public comments. He stated each person would have 2 minutes for comments.

Barry Pollack noted traffic data and property takings. He stated there is a petition with 650 signatures objecting to this. He noted an email from Planning Director Lee Newman to Town Engineer Anthony DelGaizo, dated 1/20/20, regarding traffic counts only being good for 5 years and the information needing to be updated. Covid created an opportunity to use the 2015 data. He stated the presentation November 18, 2020 noted Levels D and F services and

what could be done. Gould and Central Level E would require adding a lane on Gould with 100 feet of lane. The greatest need is Hunting northbound lane, which would need property takings on both sides. Select Board Member Matt Borrelli did not think this was ready in 2020. Mr. Block noted Mr. Pollack had used his time and he will go back to him if there is time at the end.

Leigh Doukas stated she is not representing any group she is part of. Her opinions are her own. The FAR-use was increased by 50%. All other districts with commercial use abut residential with a 50-foot setback and a 25-foot landscape buffer requirement. That should be the minimum allowed in this case. The traffic report does not talk about impacts on as-of-right property. There will be a tremendous amount of additional cars. This will impact residents of the area and the values of those properties. She has no issue with a maximum 42-foot height closest to Highland and Gould.

Monty Krieger, of 33 Woodbine Circle, stated the data shows Highland and Hunting traffic will be worsening. There is a substantial amount of increased funds, ~~but~~ ~~What~~ what would it cost to increase homeowners' taxes rather than live with greater traffic?

Susan Nissen, of Homesy Lane, asked Mr. Block to share the official position of the Needham Heights Neighborhood Association. Mr. Block stated this is not a forum for any private organization. The questions should be related to the zoning change only.

Joan Berlin, of Parker Road, noted the traffic projections and asked what projects GPI has worked on, were the projections accurate and for how long. She feels there should be greater impact. She asked if Ms. Brown has gone back to see if her projections were correct. Ms. Brown stated she very often has to go back. Almost always on larger projects a requirement is a post occupancy monitoring study, which includes traffic counts at the development and in surrounding areas.

Artie Crocker stated the question is how large not if. All buildings leading up to the intersections are not as large as what is proposed. This is not the other side of 128. The 2 sides are quite different. He stated the townspeople were shown something for the Hartney Greymont site but it was not accurate and was not true. This case is accurate but what was shown was not 35 feet high on Gould and Highland. Wingate is 20 feet high in the flat section and is further away from Gould than this would be. He feels things should be put into perspective. The Board needs to remember the worst-case scenario and show it. He feels there is no need to go to this size to get similar tax revenue. He feels it should be pushed back 100 feet and then go to the 35 feet. Needham is not a city and should not gear zoning to make it a city. He feels the town can do better than what we are doing.

Ben Daniels, of 5 Sachem Road, is directly across Highland Avenue from Muzi. He is disappointed this is back again. He feels it is premature to change the zoning without a proposal in front of them. The townspeople are being scared with hypothetical warehouses and junk yards. The Board should wait until a real project comes along like Newton. This benefits the Muzi family. He was told there was no correspondence with the Muzi family but there was. Why should the public believe what we are hearing? Ms. McKnight stated Mr. Daniels comments were out of order. The focus needs to be on zoning.

Dan Goodman, of 807 Great Plain Avenue, stated it was obvious the Planning Board put a lot of research and thought into the proposal and took comments into consideration. He is impressed with the proposal and pleased with the housing inclusion. The size is well within reason and fits in with the surrounding area. He will be excited to see this rather than what is there today. He is in favor.

Jane Volder, of 133 Brookside Road, is concerned with the traffic report. All the development going in on Needham Street in Newton would impact traffic in the future. Also, traffic does not look at the trickle effect down Central Avenue and other roads. She is concerned with the cost of mitigations. Is that paid for by the town? Mr. Block noted mitigations are paid for by the developer. Ms. Volder stated the green space only looked like 20 feet off the street border. Taxes have gone up every year. She is concerned about the continual increases in real estate taxes.

Peter Schuller stated this is premature and not a developer's plan. There is inadequate data. He yielded the rest of his time to Mr. Pollack. Steve Deroian, of Lindberg Avenue, stated this is premature. He yielded his time to Mr. Pollack. Tom Shockett, of 174 Evelyn Road, stated when traffic was diverted for Add-A-Lane people found all ways to get around. People would go through their neighborhood. Ten thousand cars a day will go through their neighborhood. He was told that Muzi spoke with the Board. That was a matter of public record and not an accusation. He ceded the rest of his time to Mr. Pollack.

Chris Lalond, of Bennington Street, feels this proposal dangerously opens the door for other property owners. He yields the rest of his time to Mr. Pollack. Alex Puzikov agreed with all the previous speakers. There is overcommercialization of the property and would allow larger buildings to be built. Twenty feet is a very small setback and there is a lot of traffic currently. He yields the rest of his time to Mr. Pollack. Nicky Pollack, of 15 Pandolf Lane, asked how many people were on this [Zoom hearing](#) call and asked if this would be made public. Mr. Block stated there were 197 people on the call. Ms. Pollack stated in 10 days there were 650 people who signed a petition. This is premature and should be 3 stories. She asked if the Board was considering the options and the scaled down proposal. Mr. Block stated the Board is looking at everything.

Nancy Greenwald, of 615 Highland Avenue, feels her property will go down in value. The project is too large and the town should wait for a developer with a project. She gave the rest of her time to Mr. Pollack. Justin Oriel, of 47 Lee Road, agrees with Mr. Crocker, Mr. Pollack and Mr. Daniels. He deferred the rest of his time to Mr. Pollack.

Andy May, of 32 Lee Road, asked if any analysis has been done on the impact on residential streets. Ms. McKnight noted that Ms. Brown had stated when there is a development proposal in front of us there would be further traffic analysis done and it will include surrounding streets. Mr. May asked if any analysis was done to determine property values of things this size and the impact on abutters. He asked what would happen with Mills Field. He feels there is not enough green in the project. He appreciates the project was scaled back but this is unsightly and should go back further.

Yulia Marie, of 93 Hillside Avenue, noted the impact on schools. The schools did not take into account the housing on the other side of 128. She asked how this will impact the schools. Selectwoman Cooley stated the expected number of children would be 28 for a 1.0 FAR and 38 for a 1.35 FAR. This number of children could be accommodated as they would be spread across all grades. Ms. Marie noted class sizes are larger than surrounding towns.

Glen Mulno, of 40 Morton Street, does not think the traffic study has taken into account Newton on the other side of the bridge. This should be taken into account. He commented he is confused. The zoning was going to include housing but not require the developer to add it. Mr. Block stated it is up to the developer to decide. Developers are not required to do anything but may choose to do office, mixed use or housing. Mr. Mulno asked why come up with a plan to appease the Muzi family without an actual plan.

Mike Michaud, of Daley Street, stated he lives off St. Mary Street and is new to town. He asked why this area was not involved in the traffic study. Oscar Mertz, of 67 Rybury Hillway, thanked all for their participation. He stated the idea of doing this zoning is critical to make a lot happen. Housing is not available in the current zoning and it is important to change that. He looks forward to a transparent process.

Ellen Finn, of Greendale Avenue, wants the Board to think about green spaces. The townspeople have asked for home grown organic but are being offered strip malls and research and development but not hockey rinks and green spaces. It is not a livable community. There needs to be outside the box thinking. This is an opportunity for a developer to make money. There has been 8 years of constant construction in their neighborhood. This is creating greed opportunity investments. She asked how the community can buy this property and engage abutters. She feels what was a good community is being destroyed.

Mr. Block invited all to send comments to the Planning Board. All comments will be considered up until and through 5:00 p.m. Thursday. He stated the Board has received good feedback tonight and from the 2/3/21 community meeting. He thanked all and asked members of the public to send comments to

planning@needhamma.gov. He noted the presentation and related materials will be posted on the website. The Planning Board intends to vote on 3/23/21.

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

VOTED: to close the hearing with the exception of receiving written communication until Thursday, 5/18/21, at 5:00 p.m.

Report of the Planning Director and Board members.

Ms. Newman noted she met with the representatives of the 128 Business Council that runs the shuttle service of the New England Business Center. There were 9 properties that participated in the shuttle. The Board imposed conditions on some projects. Three projects, with 2 owners, have dropped out of participation. She asked what kind of action the Board wants to take to enforce action as they are not complying with the permits. Ms. McKnight stated the ridership has gone down but the provider has allowed for that. Ms. Newman stated the operational costs have gone down and the costs have been shifted onto the remainder of the other participants. This has been a benefit to the town and is in jeopardy. She noted the question is if the Board is going to enforce the condition that the businesses need to supply shuttle service. Ms. McKnight suggested sending a demand letter if there is a violation. She wants to see compliance. Mr. Jacobs agreed but would also like the proponents to come before the Board to explain what is going on. Ms. Newman will reach out to the 2 property owners to come before the Board on 4/6/21. Mr. Alpert suggested the second meeting in April when Ms. Espada is on the Board.

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

VOTED: to adjourn the meeting at 9:55 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Paul Alpert, Vice-Chairman and Clerk

NEEDHAM PLANNING BOARD MINUTES

March 23, 2021

The Needham Planning Board Virtual Meeting using Zoom was remotely called to order by Jeanne McKnight, Chairman, on Tuesday, March 23, 2021, at 7:15 p.m. with Messrs. Alpert, Jacobs, Owens and Block, as well as Planning Director, Ms. Newman and Assistant Planner, Ms. Clee.

Ms. McKnight took a roll call attendance of the Board members and staff. 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 includes a public hearing and there will be an opportunity for public comment. If any votes are taken at the meeting the vote will be conducted by roll call.

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

VOTED: to automatically continue the meeting to 3/24/21 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 and authorize the Vice-Chairman to continue the meeting if the Chairman has technical difficulties.

Discussion and Vote Planning Board Recommendations:

Article 1: Amend Zoning By-Law --Highway Commercial 1 Zoning District

Article 2: Amend Zoning By-Law – Highway Commercial 1 Zoning District Schedule of Permitted Special Permit Uses

Article 3: Amend Zoning By-Law – Map Change to Highway Commercial 1

Ms. McKnight stated it would be helpful to start with a background of the Planning Board's role and why the Board has worked so hard on this over the past few years. The Planning Board is responsible for guiding growth and development, reviewing uses allowed under existing zoning and recommending updates to enhance the commercial tax base. The land within the proposed district is currently in the Industrial District. The Planning Board determined that for the gateway location, and a mixed-use district consistent with the Highland Avenue corridor was warranted. She expects, with time, it should attract high value redevelopment. A rezoning plan was developed and presented to Town Meeting in 2019. She noted the Board relies on traffic and fiscal impact reports to guide its ~~for~~ their decisions.

Mr. Block gave the context. This has been a 7-year process which was started in October 2013 through the Council of Economic Advisors (CEA). [The CEA looked at zoning districts across all individual districts.unclear] There have been 45 meetings, which shows the intention that has gone into this. The rezoning of the New England Business Center was successful. Ms. McKnight stated the role tonight is to discuss some non-substantive changes that were sent around. Then the role is to discuss substantive changes. Fifty comments came in before the hearingmeeting last week, and an additional 80 comments came in after the hearing. She reviewed the non-substantive changes and suggested some changes for clarity. She noted clarified wording for heights and setbacks for garages on page 5 and noted the parking structure paragraph was moved up. For the section on Special Permit requirements, she brought in wording on Special Permit process and strengthened the Special Permit requirements.

Ms. Newman noted a couple of areas to focus on. One should be the proposed FAR of 1.0 as of right and 1.35 by special permit. The existing zoning has an FAR of .5 and up to .75. The Board should ensure the limit is appropriately set to trigger a special permit. The as-of-right FAR should be brought down to the .7 or .75 range. Another issue she heard was the proposed height limit, especially along the Highland Avenue corridor side. It is proposed to be 2 ½ stories at 35 feet by right, which mirrors the Highland Avenue corridor. The proposed special permit height within the 200-foot setback is 42 feet with a flat roof and up to 48 feet with a sloped roof. The Board may want to set a standard of 40 to 42 feet that is comparable with the overlay zone in the Highland corridor. The

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other issue was the setback along Gould and Highland ~~proposed to be~~ 20 feet. The ~~existing~~ setback is 50 feet under the existing zoning. There is an actual 20 to 23-foot setback currently and 35 feet where the cars are. Unclear Wingate at the corner of Highland Avenue and Gould Street is set back around 25 feet, and the independent living apartments are set back 50 feet from Gould Street and. Along Putnam Avenue the setback is 25 feet. The Board should see determine if a 20-foot setback is adequate or if it should be increased up to 50 feet or 30-35 feet along the corridor.

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Ms. McKnight stated the requirement for open space at 20% was mentioned a lot at the hearing. Mr. Owens noted he is not sure why this is being discussed at this late hour. There has been intensive discussion the last 4 years. The Board has heard from all and made many compromises. He feels it is a serious mistake, with this little preparation and this little time left, to make any changes. He is opposed to making any changes. The proposal is the proposal and it is fair and balanced. The Board has fulfilled their responsibility by bringing it to Town Meeting and letting them decide. He would not reopen these issues at the last possible second and would forward it as written. Ms. McKnight stated the purpose of the public hearing is to hear the public. The Board needs to respond to the comments heard/made by the public. The Planning Director has prepared the necessary changes if the Board wants to do that. It is true it is late in the process and any changes need to get to the Town Manager by Friday, but it can be done.

Mr. Owens asked the basis of the changes. He did not hear anything that he had not already heard. They have been talking about the same issues for months and have come up with a good compromise. Mr. Alpert disagreed with Mr. Owens. The purpose of a public hearing is to hear the public, keep an open mind and make any changes necessary. He was never personally wedded to the requirements for setbacks and open space. The 20-foot setback was for a walk-in from-the-sidewalk space but maybe this is not the location for this to happen. He prefers a 50-foot setback. There were comments about the use table. People want playgrounds, fitness centers, hockey rinks. A public park is allowable as a use now as of right and that will continue to be. Fitness Centers are allowed by special permit and will continue to be allowed. Skating rinks are allowed by right now, and the entire category was moved to a special permit. Personally, he feels any of these uses would be great here. Residential has been added. To change the setback on Gould and Highland is a good idea. The landscape buffer could be the entire setback.

Mr. Alpert noted Section 4.11.2 (3), with the public entrance facing one street, should be removed. He has no preference if the height is reduced from 48 feet to 42 feet and would go along with the change. He thinks the Board did a good job. He is torn about the open space requirement of 20%. It was suggested to increase to 30%. He had reservations about 20% but is not wedded either way.

Mr. Jacobs stated the Planning Director has posted a list of FAQs on the website. He recommends all read this as it answers a lot of questions. He stated the Board did not deal with the argument made that there is a statute that does not allow the Board to approve a zoning by-law amendment ~~project~~ rejected in the last 2 years. He believes the argument is incorrect. He sought the opinion of Town Counsel who agreed with his reading. He is confident there is no 2-year ban.

Mr. Jacobs stated that a lot of negative comments went beyond the pros and cons of the rezoning project. Speaking for himself as a 41-year ~~41-year~~ resident of Needham, his view is those comments are inaccurate, unfair and poisonous. The Board spends thousands of hours trying to help the town. He never had any communications with any Muzi family member. What makes the most sense for that site is what he wants. In October 2019 a prior proposal was voted down which is what Town Meeting is ~~for~~ for, but he wants to point out the proposal did get a majority of votes, just not the 2/3 needed. He felt Town Meeting wanted a scaled down proposal with a housing option. This is exactly what they are bringing. He completely understands where Mr. Owens is coming from. There is very little new here and they have heard it all before. A lot of numbers are arbitrary but you have to draw some lines. The Board settled on these numbers. He noted one provision that allows a 25% waiver of certain issues so the 1.35 FAR could be increased up to 25%. He does not intend for this and it should be pulled out. This should be discussed. He noted the Board could talk about other things but he does feel it is pretty late in the game to make adjustments. He noted a number of comments from people objecting saying the process was flawed. The Board could not have been more open in communicating and asking people for comments.

Mr. Block stated the objective is to decide among 3 choices – keep it as is, submit it with changes or to withdraw the rezoning articles. He re-watched the 2/3/21 community meeting and the public hearing. He read all 135 submissions and petitions. What are the goals and why is rezoning necessary? The goal is to update the existing Industrial 1 Zone into a gateway mixed-use district to continue the Highland Avenue corridor. It is an improvement to the area as a whole. The use list is outdated and includes junk yards, distribution warehouses and such. These are unwanted, and the existing use list does not include a desirable development. This kind of development the rezoning envisions would increase the number of jobs in town and higher paying jobs. A fiscal analysis shows it will generate a lot of money over the years. The Board needs to look at the entire town. This is beneficial to the town as a whole and will reduce the tax burden.

Mr. Block stated the Board is choosing to be proactive to set the table for development so they are not limited in a reactive mode. None of this is new. There have been 45 meetings. He wants to clarify some misinformation. The density and heights for Needham Crossing will not be brought here. The area will not be flooded with 6 to 8 stories. The zoning is only allowing up to 3 stories inside of 200 feet from Highland and Gould, and taller buildings are pushed back 200 feet from Highland and Gould where the topography drops. Legitimate traffic concerns were raised, but there was also misinformation. There were 2 sets of traffic data with one set from 2015. That data was within the 5 years of the 2019 study. The Massachusetts Department of Transportation said the 2015 data was ok to use for the 2020 study. Rather than use the 2019 lower data the Board used the higher counts of the 2015 study to show the worst-case scenario. Takings are a misunderstanding. Some thought there would be takings in multiple places. This is not the case. The only takings are on site and there is no requirement for takings on Hunting Road. He proposes to advance the zoning with the following changes: eliminate the 25% waiver by special permit; recommend increasing the setback on Highland and Gould from 20 feet to 50 feet, as 50 feet is responsive and can encourage a decent scale of development; reduce the FAR from 1.0 to .7 by right; and agree to reduce the maximum height by special permit to 42 feet within 200 feet of Highland and Gould ~~with maximum height by special permit~~. He looked at the open space requirement. He does not know how it would impact other aspects of the development but would recommend increasing to a minimum of 25% open space.

Mr. Alpert stated he is in favor of taking away the 25% waiver ability in Section 4.11.3. In Section 4.11.2 (3), changing the setback from 20 feet to 50 feet, and if the setback is increased to 50 feet that increases the landscape buffer and the open space is right there. Ms. McKnight noted the original concept round the edge on Gould and around to Highland would be shops and such, like the office building at Chestnut Street and Junction Street with a 20-foot setback. She was content with that concept, but at the community meeting and the hearing last week she heard the people want greenery and trees. We need to respect their vision for this site. It is now zoned to require a 50-foot landscape setback. It should go to a 50-foot landscape setback along the frontage on Highland Avenue and all along Gould Street. She noted she took a point from the plan to define the 200 feet. She had not thought about the 25-foot waiver but it gives flexibility so she will go along with it. She would go along with the 50-foot setback, the 25-foot waiver and reducing the by-right FAR. She would be happy with .7 or .75.

Ms. McKnight noted, with regarding to the 48-foot height, there seems to be a movement of support for multi-family housing with an affordable aspect. The idea is to have some incentives. She suggests they keep the 48 feet by special permit, ~~to accommodate~~ provided 50% of the FAR is devoted to multi-family housing including the top floor or going to 42 feet. She is not sure the open space would make a difference whether it is set at 20% or 25%. The 50-foot setback may take care of the 20% landscaping. There is green space in the special permit requirement. The green space could be more, and she is in favor of increasing the green space from 20 to 25%. She welcomes a response on the multi-family-housing incentive she has offered.

Mr. Block asked if the increase in height was inside or outside the 200 feet. Ms. McKnight stated only on the inside. The incentive is just for the front of the property and not the back part. A discussion ensued regarding if 42/48 feet is 3 stories or 4 stories. Mr. Block stated he is not sure this is the place for a developer's vision. He opposes the change. Mr. Alpert does not see a developer putting in an office building saying if he puts in residential units he can get another 6 feet of height. He does not see this as an incentive and feels it should remain with 3 stories and 42 feet. Ms. McKnight stated she would back off from this and reviewed the 6 changes.

Upon a motion made by Mr. Alpert, and seconded by Mr. Block, it was by a roll call vote four of the five members present (Mr. Owens voted in the negative):
VOTED: to change the proposed Zoning By-Law as previously presented from a 20-foot landscape setback on Gould and Highland to a 50-foot landscape setback.

Upon a motion made by Mr. Alpert, and seconded by Mr. Block, it was by a roll call vote four of the five members present (Mr. Owens voted in the negative):
VOTED: to amend the Zoning By-Law as presented by deleting Section 4.11.2 (3), which eliminates a public entrance on the street.

A motion was made to adjust the FAR in the by right condition from 1.0 to .7. Mr. Jacobs wants the public to know this further increases the odds a developer would choose a special permit path rather than a by right path, which is a good thing.

Upon a motion made by Mr. Block, and seconded by Mr. Alpert, it was by a roll call vote four of the five members present (Mr. Owens voted in the negative):
VOTED: to adjust the FAR in the by right condition from 1.0 to .7

Upon a motion made by Mr. Block, and seconded by Mr. Alpert, it was by a roll call vote four of the five members present (Mr. Owens voted in the negative):
VOTED: to reduce the height limit within the 200-foot area to 42 feet by special permit and 3 stories and eliminate the 48-foot provision by special permit on page 3, Section 1 (b).

Upon a motion made by Mr. Alpert, and seconded by Mr. Jacobs, it was by a roll call vote the five members present unanimously:
VOTED: to amend the Zoning By-Law as presented deleting Section 4.11.3 in its entirety for the 25% waiver.

Upon a motion made by Mr. Alpert, and seconded by Mr. Jacobs, it was by a roll call vote four of the five members present (Mr. Owens voted in the negative):
VOTED: to increase the open space from 20% to 25% in Section 4.11.1 (4).

A motion was made to adopt the amended Article 1 Zoning By-Law for Highway Commercial 1 with the changes voted tonight. Mr. Jacobs asked Ms. Newman and Ms. McKnight to undertake a final review. The Chair will work with the Planning Director to make sure all cross references have been covered. The amendment to the motion was accepted to include the above language.

Upon a motion made by Mr. Alpert, and seconded by Mr. Jacobs, it was by a roll call vote four of the five members present (Mr. Owens voted in the negative):
VOTED: to adopt the amended Article 1 Zoning By-Law for Highway Commercial 1 with the changes voted tonight and the Chair will work with the Planning Director to make sure all cross references have been covered.

Upon a motion made by Mr. Alpert, and seconded by Mr. Block, it was by a roll call vote four of the five members present (Mr. Owens voted in the negative):
VOTED: to adopt Article 2 – map change for the new Highway Commercial 1 Zone as presented.

Upon a motion made by Mr. Jacobs, and seconded by Mr. Alpert, it was by a roll call vote the five members present unanimously:
VOTED: to adjourn the meeting at 9:00 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Paul Alpert, Vice-Chairman and Clerk

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NEEDHAM PLANNING BOARD MINUTES

April 6, 2021

The Needham Planning Board Virtual Meeting using Zoom was remotely called to order by Jeanne McKnight, Chairman, on Tuesday, April 6, 2021, at 7:15 p.m. with Messrs. Alpert, Jacobs, Owens and Block, as well as Planning Director, Ms. Newman and Assistant Planner, Ms. Clee.

Ms. McKnight took a roll call attendance of the Board members and staff. 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 includes a public hearing and there will be an opportunity for public comment. If any votes are taken at the meeting the vote will be conducted by roll call.

Ms. McKnight noted this is Mr. Owens last meeting. He has been on the Board for 5 years and it was a pleasure to have him on the Board. Mr. Alpert noted for 4 of the 5 years Mr. Owens was the only non-lawyer on the Board and he brought a perspective to the Board. He will be sorely missed.

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

VOTED: to automatically continue the meeting to 4/20/21 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.

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

VOTED: to authorize the Vice-Chairman to continue the meeting if the Chairman has technical difficulties.

Mr. Jacobs noted an item later on the agenda will be continued to a later date. There are several people on the call for that hearing. Ms. McKnight stated the 7:50 p.m. Minor Project [Site Plan](#) Review for Needham Enterprises, LLC for property located at 1688 Central Avenue will be moved to the 5/18/21 meeting. The Board received a letter from Attorney Evans Huber requesting it be taken off the agenda [for the 4/6/21 meeting](#). The applicant agreed the Board may have an additional 30 days after the [5/18/21 meeting](#) to make a decision. The letter also says the applicant is aware the issue of [whether the application should be considered](#) a major project has been raised by the Board. It remains the position of the applicant this is a minor project review.

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

VOTED: to reschedule the appointment on the calendar for a minor [\[special permit?\]](#) review at 1688 Central Avenue to 5/18/21 at 7:30 p.m. and agree with the applicants request [that](#) the time period by which the Board needs to make a decision, by consent of the applicant, be extended to 6/17/21.

Mr. Alpert stated Attorney Huber should be notified, if it is determined this is a major project, [because](#) he will need to withdraw this request without prejudice and file a new application by 4/16/21 in order to get on the 5/18/21 meeting agenda.

Public Hearing:

7:20 p.m. – Article 1: Map Change to General Residence B Zoning District.

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

VOTED: to waive the reading of the public hearing notice.

George Giunta Jr., attorney for the applicant, noted the Board heard this request for a map zoning change last spring. This is for a series of properties along [Rte. 128](#), with 23 properties in total. All the properties are directly across the street from Single Residence B District (SRB) properties. Some parcels are larger and there are some that are less than 10,000 square feet. None comply with Single Residence A District (SRA) requirements. All the properties are nonconforming as to frontage and area. He would like the [23 properties now in SRA](#) ~~line~~ moved to the SRB District then most of the properties would become conforming. Most do not conform with the front yard setback for the SRA District. This zoning change would allow owners to make changes and add additions. People would be able to use their properties like the people across the street. The lots do not meet the acre requirements. He noted there is not a compelling policy reason to keep these properties in the SRA District and it penalizes people who want to add an addition.

Mr. Jacobs asked if this is a Citizen's Petition and was informed it ~~is was~~. He asked if the applicants want the Planning Board to recommend approval and was informed yes. Mr. Owens had no comments or questions and noted it looked reasonable. Mr. Alpert agreed. Mr. Block noted there are a lot of homes ~~far~~ further down Hunting [Road](#), and down by Old Greendale Avenue, that are also in the SRA District. He asked if there were any comments from the neighbors ~~far~~ further down in a similar situation. Mr. Giunta Jr. stated he had not heard any comments. There are a lot of wooded areas, and north of Cheney Street is different from south of Cheney Street in the way the lots were created. Mr. Block noted that even with a map change those lots with less than 80 feet of frontage would still need to go to the Zoning Board of Appeals (ZBA) [for approval of structural changes](#). Mr. Giunta Jr. stated only 3 lots would still be nonconforming, but 20 lots would become conforming. The structures would also become conforming. Bruno DeFazio, of 176 Hunting Road, stated he has a 20-foot setback and all other properties are in line with his. Ms. McKnight noted this [hearing](#) will be continued after she deals with the 7:50 p.m. appointment for 1688 Central Avenue.

Appointment:

7:50 p.m. – Minor Project Review: Needham Enterprises, LLC, 105 Chestnut Street, Suite 28 Needham, Massachusetts, Petitioner (Property located at 1688 Central Avenue, Needham, MA).

Ms. McKnight informed any interested parties a vote was taken earlier in the meeting and this [agenda item](#) will be continued to the 5/18/21 meeting at 7:30 p.m. The Board will hear from the residents at that time.

7:20 p.m. – Article 1: Map Change to General Residence B Zoning District—Continued.

Ms. McKnight stated there are a number of lots developed with houses. She asked if any could be divided into 2 lots under SRB Zoning with people conveying strips of land. Mr. Giunta Jr. stated, based on conjecture, there is always the option to do that. All lots have single houses but he does not expect any more than maybe 2 or 3 new houses to go in. South of Kendrick Street the lots are too small to do anything and north of Kendrick Street are a series of lots with 100 feet of frontage. Lots would have to be combined. Mr. Block stated one issue that has come to the Board is building a house behind a house on some longer lots. He would not like to see this happen. Mr. Giunta Jr. stated that is not particularly practical. There would need to be a 40-foot wide road and a 60-foot radius. Three lots would have to be put together but that is not really marketable with 128 behind.

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

VOTED: to close the hearing.

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

VOTED: to recommend adoption of the Article to Town Meeting.

Discussion and Vote of Planning Board Recommendation on Zoning Articles for Annual Town Meeting.

Mr. Jacobs noted, for the record, that ~~the~~ suggested ~~amendments to Article 5~~ changes have come from 2 sources. Ms. McKnight stated she is ~~partactive with-of~~ Equal Justice Needham, whose ~~members~~ want to remove the 240-unit cap for affordable housing. She is not in favor of removing the cap but has helped them out ~~with drafting of appropriate wording.~~ ~~She noted that Town Meeting Member~~ Barry Pollack had organized opposition to the rezoning ~~set forth in Article 5.~~ Following the hearing on ~~Articles 5 and 6 on~~ 3/16/21 several changes were made to the zoning before it was finalized. This group (~~the Pollack group~~) wanted additional changes. They were put in touch with Town Counsel. She understands at the present time the ~~Pollack~~ group is no longer interested in pursuing any amendments.

Mr. Block stated ~~he and Ms. McKnight and Ms. Newman~~ they met with the Finance Committee last week. Questions were asked about the fiscal impact under the existing zoning, by right zoning and special permit zoning. ~~Mr. Block, Ms. McKnight and Ms. Newman? They~~ are in the process of completing that for ~~the Finance Committee~~ them. It will be submitted when it is completed. Ms. Newman stated the Finance Committee is meeting next Wednesday. She anticipates they will be asked to attend. This ~~update of Finance Committee response~~ will be discussed at the next ~~Planning Board~~ meeting. The advantage would be, if there are any other amendments, everything could be discussed together.

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

VOTED: to recommend to Town Meeting they adopt the proposed Article 5 Zoning By-Law for the creation of the Highway Commercial 1 District and adopt Article 6 for the zoning provisions (~~map amendment~~) for the Highway Commercial 1 District as set forth in the proposed Zoning Article 6.

Board of Appeals – April 15, 2021

Hearst Stations Inc dba WCVB-T, applicant -- 5 TV Place

Ms. McKnight noted there has been a helicopter pad since 1985. The applicant is going back to the old helicopter type.

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

VOTED: “No comment.”

Glenn and Deborah Mulno, applicants – 40 Morton Street

Ms. McKnight noted the applicants are adding a screen room on a nonconforming lot.

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

VOTED: “No comment.”

Rachel Bright, applicant – 20 Coolidge Avenue

It was noted there are limitation on the FAR of .38. The applicant wants to add on by going up and out to some extent. Ms. Newman noted the existing house is conforming and the present situation is at .37 FAR. The applicant is asking to create a new nonconformity and go to an FAR of .5. Arguably this could require a variance. This is not in keeping in the context of what the Planning Board sent to Town Meeting ~~when the so-called “Large House” Zoning By-law amendments were adopted.~~ Mr. Block noted the 7,000 square foot lot is under the 10,000 square feet required for the SRB District. Ms. McKnight stated it is important to make the position clear, since this is the first time something is being presented under the new zoning. Mr. Alpert stated there is nothing in the By-Law that

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allows the Zoning Board of Appeals (ZBA) to [approve the creation of a new nonconformity](#) ~~do that~~ in these nonconforming situations. He noted it is a legal question.

Mr. Owens stated he is opposed to approving this and feels the Planning Board should let the ZBA know that. Mr. Alpert commented on the hard work of the Large House Committee. There is also a question of the legal authority to grant the requested relief without a variance. Mr. Owens stated this is exactly what the Large House zoning was trying to stop. Mr. Jacobs agreed.

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

VOTED: to notify the ZBA the Planning Board opposes approving this request after all the work the Large House Committee did and to also question the legal authority to grant the requested relief without a variance.

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

VOTED: in honor of a colleague [\[Mr. Owens\]](#) who has been a mentor to him and he is thankful for his guidance, to adjourn the meeting at 8:40 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Paul Alpert, Vice-Chairman and Clerk

NEEDHAM PLANNING BOARD MINUTES

April 21, 2021

The Needham Planning Board Virtual Meeting using Zoom was remotely called to order by Jeanne McKnight, Chairman, on Wednesday, April 21, 2021, at 5:30 p.m. with Messrs. Alpert, Jacobs and Block, as well as Planning Director, Ms. Newman, and Community Housing Specialist, Ms. Sunnarborg.

Ms. McKnight took a roll call attendance of the Board members and staff. 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 Zzoom meetings. She noted this meeting does not include any public hearings so there will be no opportunity for public comment. She stated all supporting materials for this meeting are posted on the website www.needhamma.gov. If any votes are taken at the meeting the vote will be conducted by roll call.

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

VOTED: to automatically continue the meeting to 8:00 p.m. this evening with the same zoom ID number if any technical difficulties arise that keep the Planning Board from continuing this meeting tonight and to authorize the Vice-Chairman to continue the meeting if the Chairman has technical difficulties.

Discussion of Town Meeting articles, including possible amendments.

Ms. Newman informed the Board she received an email from Stephen Frail today, with suggestions, that is not part of the agenda packet. He would like to offer an additional motion to amend to address general energy building standards. Ms. McKnight stated people had proposed amendments to the proposed Article 5 for the Highway Commercial 1 (HWC1) zone. The Board had encouraged people to consult with the Planning Board in advance if there were proposed amendments. The Articles have been reviewed by Town Counsel and this meeting was scheduled to discuss the proposed amendments. She noted there are 4 amendments. The first 2 are from Equal Justice Needham (EJN). Ms. McKnight disclosed she has been active in this group but is not advocating for these amendments. Both of these amendments relate to multi-family housing. Ms. McKnight noted the third amendment is from Barry Pollack. He has strong opinions of the proposed Article 5 By-Law and came up with an amendment. The last one came yesterday from Stephen Frail, who is a Town Meeting member. He wants to strengthen the special permit criteria and environmental sustainability.

Ms. McKnight noted the first amendment from EJN is supplemented by a 3-page3-page statement in support. The amendment suggests deleting subsection 2 of 3.2.7.2 (m) under item 2, to remove the cap of no more than 240 dwelling units. Mr. Alpert stated he would like to hear what Ms. Sunnarborg has to say regarding this. Ms. Sunnarborg stated, on the face of it, it makes sense to eliminate the cap. The cap came from the Mixed-Use Overlay District. It made sense in that district. She doubts there will be a proposal for full multi-family. The location is better oriented to mixed-use and commercial, so, it is likely compelling that a developer would look beyond just housing. Mr. Block stated there is not enough capacity on this site for a multi-family development larger than 240 units. The Board is trying to balance uses on this site. Mr. Jacobs stated balance is what the Board sought here, but Any number of units would be arbitrary, they should let the market decide.

Ms. Newman noted the 240 number and unit size mix was derived to minimize the impact on the school system in the Mixed-Use District and then it was applied here. Mr. Alpert noted the town redistricts as schools get overwhelmed with students. The big picture needs to be looked at. The Board is reconsidering where it wants to go. It started as industrial zoned and a commercial parcel. Then there was a recommendation from the Council of Economic Advisors (CEA) and the Economic Advisor to the Town that Gould Street be rezoned from Highland Avenue down to the park for better aesthetic use and to be more amendable. The original proposal had no residential. There was positive feedback from people in town and some Select Board members. With community meetings there were some that wanted all residential. They felt it is mostly a residential area and there would be less traffic and noise from residential development. The Board tried to reach a compromise but added a cap to take all into account. If it was all residential there may be push back by the Select Board. The question is what does the Board see for this site. He agrees with Mr. Jacobs that they could let the market decide. There are a lot of uses allowed here. There is a question of the market placemarketplace, and they may not see research and development here.

Mr. Block would like to see ~~as-athe~~ Town, through executive responsibility and as leaders, ~~to~~-develop some form of equitable housing program. The Board cannot be expected to do that for just this site. This site is driven in general toward commercial. He does not support an unlimited amount of housing. This is a good plan with good vision. Some housing should be allowed due to ~~feedback~~feedback, but it does not change the vision for this site. Mr. Jacobs stated the Board has undertaken studies and there has been a lot of discussion. The possibility of no cap was never discussed. He asked if there was any idea how many residential units could be put there. He does not know and it has never been studied. Ms. McKnight stated it was an unknown number. She feels it would be unlikely it would be all ~~housing~~housing, but it is hard to predict.

Mr. Block stated that is outside the scope of the framework. The goals were clear – to improve the gateway and enhance the aesthetics and to enable a greater level of public control over development. The goals remain ~~valid~~valid, and the framework is good. Ms. McKnight stated she is inclined toward what Mr. Jacobs said. A lot of care has been put into the evaluations of what the Board proposed. She has confidence in the study done by Judy Barrett and can say with confidence the impact on the school system. Eliot School is the one school that is almost at capacity. Redistricting is not an easy thing to do. She is confident in the fiscal impact reports and the effect on schools. She is opposed to eliminating the cap.

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

VOTED: to oppose removal of the cap on the number of housing units.

Ms. McKnight stated the second amendment by EJM is standards for the affordable housing homeownership project. The income of the household would be at 80% of median income. Those units are priced for affordable costs of 70% of median income. She asked Ms. Sunnarborg to comment. Ms. Sunnarborg stated the standards required are from the state as part of the Local Initiative Program (LIP) guidelines. If homeownership, the units are priced at the state formula, which is going to be required. There is a 70% marketing window required across the state. Ms. McKnight asked if the units are not countable if not sold under this formula. Ms. Sunnarborg noted all units need to be approved by the state.

Mr. Alpert stated he does not support this. He is very sympathetic to the goals stated by the proponent of the amendment. Analysis has already started as to where affordable housing is and is not with a view toward changing the By-Laws as a whole with regard to affordable housing. He does not want parcel by parcel but to do it as a proposal after Town Meeting and rewrite the Affordable Housing By-Law to include all zoning districts in town that allow affordable housing. They should examine these criteria, vet them and get guidance by Ms. Sunnarborg to examine on a townwide basis.

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

VOTED: to not support this amendment and invite the proponents to come back to examine on a townwide basis.

Ms. McKnight noted the third amendment is by Barry Pollack. The amendment would ~~increases~~ the open space requirement from 25% to 30%. It also reduces the base FAR to 0.8 to encourage Mixed-Use Development with the addition of 0.3 FAR for a total 1.1 FAR with the extra 0.3 split evenly between housing and an indoor sports center of some kind. This is a reduction from 1.35 to 0.8. The Board's goal is to enhance public control over development and special permits. This would not allow the Board much control over development. A discussion ensued. A motion was made to oppose the motion in this form. Mr. Alpert stated he regrets Mr. Pollack did not separate this into 2 motions. He would have had more sympathy for an increase in green space and may have approved ~~that~~that, but it is together.

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

VOTED: to oppose this amendment.

Ms. McKnight noted the 4th amendment came in at 4:38 p.m. today. There has been no time to consider it.

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

VOTED: to, at this time, take no position but it could be discussed at a subsequent meeting.

Report of the Planning Director and Board members

Ms. Newman noted the Board has been invited to the Select Board meeting next Tuesday. The Planning Board could have a meeting before or after if needed to discuss Mr. Frail's amendment. It would be posted as a Planning Board meeting. Mr. Block stated the Board voted to close the hearing for 100 West Street last night. He asked if anything further needed to be done for Ms. Newman to prepare a decision and asked what the process was. Ms. Newman reviewed the process and stated she understands the framework and will begin preparing a draft decision. She is comfortable putting together the framework. Mr. Jacobs stated he will be available for Town Meeting but not in person. Ms. Newman noted she had a conversation with George Giunta Jr. and he posted a video for a Citizen's Petition Article. She has also worked on funding for consultants.

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

VOTED: to adjourn the meeting at 6:50 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Paul Alpert, Vice-Chairman and Clerk

NEEDHAM PLANNING BOARD MINUTES

April 27, 2021

The Needham Planning Board Virtual Meeting using Zoom was remotely called to order by Jeanne McKnight, Chairman, on Tuesday, April 27, 2021, at 8:00 p.m. with Messrs. Alpert, Jacobs and Block, as well as Planning Director, Ms. Newman and Assistant Planner, Ms. Clee.

Ms. McKnight took a roll call attendance of the Board members and staff. 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 ~~z~~Zoom meetings. She noted this meeting does not include any public hearings so there will be no opportunity for public comment. She stated all supporting materials for this meeting are posted on the website www.needhamma.gov. If any votes are taken at the meeting the vote will be conducted by roll call.

Discussion of Town Meeting articles, including possible amendments.

Ms. McKnight noted this meeting is to discuss Stephen Frail's amendment that was emailed on 4/21/21. Ms. Newman noted the Board needs to settle on a recommendation for this amendment, talk of how to manage Town Meeting and who will take the lead on which articles. Mr. Alpert asked, if Needham adopts the stretch code, would it be in the Zoning By-Law or General By-Law. Ms. Newman stated it would be in the General By-Law. Ms. McKnight stated, as to the form of Mr. Frail's proposed amendment, that "e" should be deleted in Article 5 regarding special permit criteria and insert "e" – "property development should be built to the most energy efficient building standards, eg: stretch building code, approved by the state of MA at the time the special permit is requested regardless if the town adopts the standard for townwide use." The Planning Director should check with Town Counsel. The current subsection gives developers some flexibility. Mr. Frail made the change after Town Counsel's response.

Mr. Jacobs stated he agrees with Town Counsel Christopher Heep's second paragraph. Mr. Alpert noted the Board has set out standards for the special permit process in this project and others. He asked if there is a general Special Permit By-Law that needs to be followed in all special permits. Ms. Newman stated there is. Mr. Alpert stated, considering all the amendments in front of the Board, he is reluctant to be in front of Town Meeting in favor of one amendment and not the others. He would ask Town Meeting to disapprove all amendments and vote on the Planning Board Articles without amendments. He is very sympathetic to this amendment and the affordable housing change criteria. The Board needs to have a hearing and allow all people with interests to express their views. He would like to see this townwide in all districts. He would disapprove for this Zoning By-Law at this Town Meeting but is ok with taking it up as a Planning Board. Mr. Frail's amendment envisions that the state will have proposed a stricter local-option stretch building code, but this ~~The~~ Stretch Code would not have ~~has not~~ been adopted in Needham yet. Each town could choose to adopt it. He would like to do this townwide if it could be legally done.

Mr. Jacobs stated he agrees with Mr. Alpert and Town Counsel Heep. He feels it would be open to challenge and recommends Town Meeting not adopt the amendment. Mr. Block stated he concurs with Mr. Jacobs and generally with Mr. Alpert. He does not know if the Board wants to adopt all standards for every district across the board. They may want stronger standards in some areas. This would need to be studied in greater detail. Mr. Alpert stated they need the process to vet it to accomplish a worthy goal. Ms. McKnight commented Select Board member Marianne Cooley mentioned a focus on sustainability, but, ~~Aa~~ new proposal for one area is not the way to go.

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

VOTED: to recommend not adopting Mr. Frail's proposed amendment.

Ms. Newman recommended Mr. Block be the point person for the Highway Commercial 1 (HWC1) Article. Ms. McKnight could be the lead for Article 7 and for questions on the planning consulting funds. Mr. Jacobs stated the way Mr. Block did his presentation tonight to the Select Board was very effective. He commended him and noted that type of presentation should be at Town Meeting. Mr. Block asked if the slide created for tonight could be used at Town Meeting. He would like the HWC1 link to be redirected and that can be included in that slide. Ms. McKnight stated Mr. Block can do a completed ~~re~~-recording if he wants. Mr. Jacobs feels there may be another way to get the slide to Town Meeting members. He suggested live handouts. Ms. Newman will check in the morning the best way to get the information to Town Meeting members.

Ms. Clee stated Assistant Town Manager Katie King emailed regarding the Select Board votes that were taken tonight. On the HWC1 recommendation the vote was 3 in favor and one abstention, for the planning consulting funds, the vote was approved 4 to 1 and the Citizen's Petition vote was 4 to 0 not to adopt. Mr. Alpert asked if the Finance Committee has voted on the Citizen's Petition and was informeded the Finance Committee voted to support it. Ms. McKnight stated the Finance Committee's role ~~is~~ to advise on the financials impact of the proposed By-Laws.

Ms. Newman stated Planning Board meetings are posted for Saturday and Sunday. She plans to be there on Monday but is not allowed to sit with the Board. She will have her phone and all the files. Mr. Jacobs will be available by phone.

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

VOTED: to adjourn the meeting at 8:48 p.m.

Respectfully submitted,
Donna J. Kalinowski, Notetaker

Paul Alpert, Vice-Chairman and Clerk

From: [Lee Newman](#)
To: [Alexandra Clee](#)
Subject: FW: Needham Farmers Market
Date: Tuesday, July 13, 2021 4:25:11 PM

From: Jeff Friedman <friedmanesq@aol.com>
Sent: Tuesday, June 22, 2021 8:35 AM
To: Alexandra Clee <aclee@needhamma.gov>; Lee Newman <LNewman@needhamma.gov>
Cc: Sandy Cincotta <scincotta@needhamma.gov>; fundamentallynuts@gmail.com
Subject: Needham Farmers Market

Hi Alex and Lee,

NFM wants to increase the number of artists from 2 to 4 maximum per market. The Special Permit currently provides for 2 artists. Would this require a de minimus amendment and if so would the Planning Board allow it? NFM has space for 4 artists. I do not believe that the Board of Health and Health Department would object to this increase. They did not recently object to NFM having vendor booths about one another this season, following current State guidance, i.e. the MA Department of Public Health rescinding its Covid-19 health and safety mandates for farmers markets. See paragraph 6 of Special Permit Decision dated March 2, 2021.

Best,
Jeff

Jeff Friedman
President, Needham Farmers Market



TOWN OF NEEDHAM, MA

PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT

RECEIVED TOWN CLERK
NEEDHAM, MA 02492

2017 APR 26 PM 4:35
500 Dedham Ave
Needham, MA 02492
781-455-7550

PLANNING

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

Needham Farmers Market, Inc.

Town of Needham

April 25, 2017

(Original Decision dated November 17, 2009,

amended March 2, 2010, November 16, 2010, November 16, 2010, June 21, 2011 and May 1, 2012)

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 March 16, 2017 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 Major Project Site Plan Special Permit No. 2009-06, dated November 17, 2009; (2) a Special Permit under Section 3.2.2 of the Needham By-Law for a farmers market in the Center Business District; (3) a Special Permit under Section 3.2.2 of the By-Law for more than one use on a lot; and (4) a Special Permit under Section 5.1.1.6 of the By-Law to waive strict adherence with the off-street parking requirements of Sections 5.1.2 and 5.1.3 of the By-Law (Off-Street Parking Requirements).

The requested Major Project Site Plan Review Special Permit Amendment would permit the operation of a farmers market on Garrity's Way on Sunday afternoons. The farmers market would operate on Sundays beginning at the end of May through the last day of November, inclusive, from 12:00 p.m. to 4:00 p.m. The farmers market would have a maximum of 13 vendors, who will use booths, canopies or other temporary structures on site. In addition to the vendors, there will be tables, booths or canopies for nonprofit organizations, two artists, artisans, musicians, and NFM's Market Manager. The property is the subject of Major Project Site Plan Special Permit No. 2009-06, issued to Town of Needham, 1471 Highland Avenue, Needham, Massachusetts, dated November 17, 2009 and amended March 2, 2010, November 16, 2010, November 16, 2010, June 21, 2011 and May 1, 2012.

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 Chairman, Elizabeth J. Grimes, on Wednesday, April 12, 2017 at 7:15 PM in the Powers Hall of the Needham Town Hall, 1471 Highland Avenue, Needham, Massachusetts. Board members, Elizabeth J. Grimes, Paul S. Alpert, Martin Jacobs, Jeanne S. McKnight, and Ted Owens were present at the April 12, 2017 public 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 Further Site Plan Review completed by the applicant dated March 16, 2017.
- Exhibit 2** Two letters from Jeffrey Friedman, President, Needham Farmers Market, Inc., to the Needham Planning Board dated March 8, 2017 and March 9, 2017.
- Exhibit 3** Plan prepared by Needham Department of Public Works, Engineering Division, entitled "Proposed Farmer's Market", dated March 7, 2017.
- Exhibit 4** Plan showing depiction of location of vendors on Garrity's Way, undated.
- Exhibit 5** Plan prepared by John A. Hammer III P.L.S. Professional Land Surveyor, 39 George Brown Street, Billerica, MA, 01281, entitled "1471 Highland Avenue, Zoning As-Built Plan of Land, in Needham Massachusetts", dated September 30, 2011.
- Exhibit 6** License Agreement between the Needham Farmers Market, Inc. and the Town of Needham, dated April 12, 2017.
- Exhibit 7** Letter from Jeffrey Friedman, President, Needham Farmers Market, Inc., dated April 7, 2017 transmitting the following correspondence that was originally directed to the Selectmen: (1) Letter from the Environmental Ministry Team of the Congregational Church of Needham, undated; (2) Letter from Eleanor Rosellini and Katrina Kipp, Co-Chairs, Green Congregation Committee, First Parish in Needham, dated January 14, 2017; (3) Letter from Kevin Ruddy, Christ Episcopal Church, Green Committee, dated January 11, 2017; (4) Letter from Steve and Karen Waller, the Center Café, dated January 25, 2017; (5) Letter from Brenda Stark, Owner, Closet Exchange, dated January 16, 2017; (6) Letter from Sandra Robinson, Needham Community Council, dated January 13, 2017; (7) Email from Donna DeMaria, Teacher, Hillside School, dated February 12, 2017; (8) Statement from Needham Business Association, undated; (9) Letter from Sandra Rizkallah and Tom Pugh, Plugged In Band Program, dated January 19, 2017; and (10) Letter from Joseph Leghorn, undated.
- Exhibit 8** Email from Tom Gehman, Market Manager, dated April 11, 2017.
- Exhibit 9** Interdepartmental Communication (IDC) to the Board from Chief Dennis Condon, Needham Fire Department, dated April 7, 2017; IDC to the Board from Lieutenant Kraemer, Police Department, dated April 5, 2017; IDC to the Board from Chief John Schlittler, Needham Police Department, dated April 7, 2017 and April 12, 2017.

Received after the close of the public hearing:

- Exhibit 10** Interdepartmental Communication (IDC) to the Board from Thomas Ryder, Assistant Town Engineer, dated April 13, 2017.

EXHIBITS 1, 2, 3, 4, 5 and 6 are referred to hereinafter as the Plan.

FINDINGS AND CONCLUSIONS

- 1.1 The subject property is located in the Center Business zoning district at 1471 Highland Avenue, Needham, MA, 02492, owned by Town of Needham. Said property is shown on Needham Town Assessors Plan No. 51 as Parcel 1 containing 1.23 acres.
- 1.2 The property is the subject of Major Project Site Plan Special Permit No. 2009-06, issued to Town of Needham, 1471 Highland Avenue, Needham, Massachusetts, dated November 17, 2009 and amended March 2, 2010, November 16, 2010, November 16, 2010, June 21, 2011 and May 1, 2012.
- 1.3 On November 17, 2009, under Major Project Site Plan Special Permit No. 2009-06, dated November 17, 2009, issued to the Town of Needham, the Board approved the expansion of the existing Town Hall by approximately 13,836 square feet, and the renovation of approximately 20,989 square feet of the existing facility for a total of 34,825 square feet.
- 1.4 The Needham Farmers Market, Inc. (NFM) is a nonprofit corporation and civic organization based in Needham with the purpose of operating a farmers market in Needham and advancing community goals of healthy food and diet, especially for children, as well as providing a meeting place for Needham residents.
- 1.5 The Town of Needham has agreed to allow the Needham Farmers Market to use Garrity's Way for the operation of a farmers market on Sunday afternoons from Sunday, May 28, 2017 through the Sunday, November 19, 2017. This is pursuant to a License Agreement dated April 12, 2017 detailed under Exhibit 6 of this Decision. The application for Special Permit is for a two year period renewable every two years as described under Section 4.6 of this Decision.
- 1.6 The Needham Farmers Market proposes to operate a farmers market on Garrity's Way, in front of Needham Town Hall, for four hours every Sunday, opening at 12:00 noon and closing at 4:00 p.m. Operation will begin on Memorial Day Sunday and will extend through the last day of November.
- 1.7 The Needham Farmers Market has proposed to have a maximum of 13 vendors on each market day, who will use booths, tables, canopies or other temporary structures on the site. Each vendor will have approximately one person selling at its location. The Needham Farmers Market has stated that at least eighty percent of all vendors will sell food items. The Needham Farmers Market will have a staff of approximately two people on each market day. In addition to the vendors, the Market will have tables, booths or canopies (which might be shared) on Garrity's Way for Needham nonprofit organizations, two artists, musicians, and NFM's Market Manager.
- 1.8 Set-up time is proposed to begin two hours before the start of the market and break down time is proposed to be for two hours after the market closes. The hours of operation shall be from 12:00 p.m. to 4:00 p.m.
- 1.9 The 13 vendors (maximum proposed to be present at any one time) will be located only on Garrity's Way. The physical layout of the Market shall be entirely located within the licensed area and not at all on the Town Common itself.

- 1.10 During setup and breakdown, vendors may use parking spaces on Chapel Street to unload and load if the spaces are available. During Market hours, the vendors will be parked in the Chapel Street Municipal Parking Lot. During NFM's use of Garrity's Way, it will be blocked off with yellow tape, traffic cones, or by other means.
- 1.11 The Needham Farmers Market acknowledges that all food vendors shall obtain food permits from the Needham Board of Health unless excluded by State or Local regulations. All applicable State and Local Health regulations shall be met.
- 1.12 The Needham Farmers Market and its vendors propose to have liability insurance in effect during the farmers market as well as motor vehicle insurance.
- 1.13 The Petitioner has requested a Special Permit pursuant to Section 5.1.1.6 of the By-Law to waive strict adherence with the requirements of Section 5.1.2 (Required Parking) and Section 5.1.3 (off-street parking design requirements).
- 1.14 Under the By-Law Section 5.1.2, in the event that the Building Inspector is unable to determine if a particular use relates to any use within the table of "Required Parking" (Section 5.1.2), the Planning Board shall recommend to the Building Inspector a reasonable number of spaces to be provided based on the expected parking needs of occupants, users, guests or employees of the proposed business. Based on the Department of Public Works' recommendation, as recommended in Report 432 of the Planning Advisory Service for Off Street Parking Requirements for Farm Stands, the use requires 3 parking spots per every 1,000 square feet. The area of the property where the vendors will be stationed is calculated to be approximately 4,767 square feet. Therefore, the Board recommends a total parking requirement of 14 spaces ($4,767/1,000 \times 3 = 14$). Accordingly, a waiver of 14 parking spaces is required as all available on-site parking spaces have been previously allocated to Town Hall use.
- 1.15 The Petitioner proposes to operate the farmers market after the main activities of the Town Hall have concluded for the week. During the operation of the Market, parking for motor vehicles will be at the Chapel Street, Eaton Square, and Chestnut Street Municipal Parking Lots. The vendors will park at the Chapel Street Lot. The Board finds that the parking lots in the vicinity, as noted above, will satisfy the parking demands for the Needham Farmers Market.
- 1.16 The Planning Board finds that no parking study is required for the farmers market use as proposed, due to its being held on Sundays, when parking in the Center of Town is least scarce and the Town Hall is closed.
- 1.17 The Needham Farmers Market proposes to have free musical entertainment from individuals or small groups at the farmers market, such as flute, fiddle or guitar players. Amplification, if any, would be limited and noise will not extend beyond the site.
- 1.18 Vendors will be permitted to use the restrooms of Center Café and Bagels Best.
- 1.19 Vendors will be required to remove all trash and waste per an agreement with Needham Farmers Market, Inc. Additionally, the Petitioner has stated that the farmers market staff will assist in picking up and removing all trash from the site.

- 1.20 Adjoining premises will be protected against seriously detrimental uses on the site by provision of surface water drainage, sound and site buffers, and preservation of views, light and air. The farmers market is proposed to utilize Garrity's Way on Sunday afternoons from Memorial Day Sunday through the last day of November. The Petitioner proposes no construction and no permanent site changes. The Needham Farmers Market proposes to have musical entertainment that will either be un-amplified or slightly amplified where the noise will not extend beyond Garrity's Way and Town Common.
- 1.21 Convenience and safety of vehicular and pedestrian movement within the site and on adjacent streets, the location of driveway openings in relation to traffic or to adjacent streets and, when necessary, compliance with other regulations for the handicapped, minors and the elderly has been assured. During the operation of the Needham Farmers Market, parking for motor vehicles will be at the Chapel Street, Eaton Square, and Chestnut Street Municipal Parking Lots. The vendors will park at the Chapel Street Lot. Any additional traffic due to the Market on surrounding streets will be marginally increased, thus no traffic congestion. When the Needham Farmers Market was previously located at the front lawn of First Parish at Dedham and Great Plain Avenues and later at the Eaton Square Municipal Parking Lot, there was no traffic congestion due to the operation of the Market. The Needham Farmers Market will be solely located on Garrity's Way. During Market hours, this road will be blocked to vehicular traffic at Chapel Street and Highland Avenue. Town Hall is closed on Sundays. This location is centrally located in Needham and thus very accessible and convenient to go to by vehicle, walking, jogging, or bicycling. This location is convenient for residents already shopping at Downtown stores. The Market will stimulate retail business. Market shoppers can also eat at local restaurants in the Downtown. Residents out for a walk with their family or dog, jogging, relaxing at the Town Common, bicycling, or shopping can stop at the Market. The handicapped and the elderly can access the Market from the surrounding main arteries, i.e. Chapel Street, Highland Avenue, Great Plain Avenue, and from the Town Common. Bagel's Best and the Center Cafe will allow vendors to use their bathrooms.
- 1.22 Adequate methods for disposal of refuse and waste will be provided. Vendors will be required to remove all trash and waste per an agreement with Needham Farmers Market, Inc. Needham Farmers Market staff will additionally assist in picking up and removing all trash from the site. Vendors may use the bathrooms at Bagel's Best and the Center Café. The waste water system for these restaurants is connected to the municipal sewer system.
- 1.23 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 this By-law has been assured. The Petitioner has not proposed any alteration to the structure or the scope of its operations. The relationship of structures and open spaces to the natural landscaping, existing buildings and other community assets will remain unchanged.
- 1.24 The proposed project will not have any adverse impacts on the Town's resources, including the Town's water supply and distribution system, sewer collection and treatment, fire protection and streets. The proposed use will not have an adverse impact on surrounding businesses. The existence of the Needham Farmers Market is an asset for Needham and will be a source of community in Needham.
- 1.25 Under Section 7.4 of the By-Law, a Major Project Site Plan Special Permit amendment may be granted within the Center Business District provided the Board finds that the proposed development will be in compliance with the goals and objectives of the Master Plan, and the provisions of the By-Law. On the basis of the above findings and conclusions, the Board

finds the proposed development Plan, as conditioned and limited herein, for the site plan review, to be in harmony with the purposes and intent of the By-Law and Town Master plans, to comply with all applicable By-Law requirements, to have minimized adverse impact, and to have promoted a development which is harmonious with the surrounding area.

- 1.26 Under Section 3.2.2 of the By-Law, a Special Permit may be granted to allow for more than one nonresidential use on the lot, provided the Board finds that the proposed use is in harmony with the general purposes and intent of the By-Law. On the basis of the above findings and conclusions, the Board finds the proposed development Plan, as conditioned and limited herein, to be in harmony with the general purposes and intent of the By-Law, to comply with all applicable By-Law requirements, and to not increase the detriment to the Town's and neighborhood's inherent use.
- 1.27 Under Section 3.2.2 of the By-Law, a Special Permit may be granted to allow a farmers market in the Center Business District. On the basis of the above findings and criteria, the Board finds that the proposed use, as conditioned and limited herein, to be in harmony with the purposes and intent of the By-Law, to comply with all applicable By-Law requirements and to not increase the detriment to the Town's and neighborhood's inherent use.
- 1.28 Under Section 5.1.1.6 of the By-Law, a Special Permit to waive strict adherence with the requirements of Section 5.1.2 and Section 5.1.3 of the By-Law (Off-Street Parking Requirements) may be granted provided the Board finds that owing to special circumstances, the particular use, structure or lot does not warrant the application of certain design and parking spaces requirements, but that a waiver of certain design and parking spaces requirements is warranted. On the basis of the above findings and conclusions, the Board finds that there are special circumstances justifying the reduction in the number of required parking spaces and design requirements of the By-Law, as conditioned and limited herein, which will also be consistent with the intent of the By-Law and which will not increase the detriment to the Town's and neighborhood's inherent use.

THEREFORE, the Board voted 5-0 to GRANT: (1) the requested Major Project Site Plan Special Permit amendment under Section 7.4 of the By-Law and Section 4.2 of Major Project Site Plan Special Permit No. 2009-06, dated November 17, 2009; (2) the requested Special Permit under Section 3.2.2 of the Needham By-Law for a farmers market in the Center Business District; (3) the requested Special Permit under Section 3.2.2 of the By-Law for more than one use on a lot; and (4) the requested Special Permit under Section 5.1.1.6 of the By-Law to waive strict adherence with the off-street parking requirements of Sections 5.1.2 (Required Parking) and 5.1.3 of the By-Law (Off-Street Parking Requirements), subject to and with the benefit of the following Plan modifications, conditions and limitations.

PLAN MODIFICATIONS

Prior to the issuance of a building permit or the start of any construction on the site, the Petitioner shall cause the Plan to be revised to show the following additional, corrected, or modified information. The Building 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.

- 2.1 No Plan Modifications.

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 conditions and limitations set forth in Major Project Site Plan Special Permit No. 2009-06, issued to Town of Needham, 1471 Highland Avenue, Needham, Massachusetts, dated November 17, 2009 and amended March 2, 2010, November 16, 2010, November 16, 2010, June 21, 2011 and May 1, 2012, as further amended by this Amendment are ratified and confirmed.
- 3.2 The Board approves the use by Needham Farmers Market of a farmers market on Garrity's Way, as shown on the Plan, as modified by this Decision, from the Sunday of Memorial Day Weekend to the last Sunday in November.
- 3.3 The hours of operation shall be limited to four hours every Sunday, opening at 12:00 noon and closing at 4:00 p.m. from Memorial Day Sunday through the last day of November.
- 3.4 The operation of the farmers market in the parking lot area of Garrity's Way, Needham, Massachusetts shall be as described in Sections 1.5, 1.6, 1.7, 1.8, 1.9, 1.10, 1.11, 1.12, 1.17, 1.18, and 1.19 of this Decision and as further described under the support materials provided under Exhibits 2, 3, 4 and 6 of this Decision.
- 3.5 The maximum number of vendors at any given time shall not exceed thirteen (13).
- 3.6 In addition to the vendors, up to two tables, booths or canopies may be available for the Community Farm, other Needham nonprofit organizations, artists, artisans, musicians and the Needham Farmers Market Manager.
- 3.7 The thirteen (13) vendors shall be located on Garrity's Way only. There shall be no vendors located in the Town Common.
- 3.8 At least eighty (80) percent of all vendors shall sell fresh produce and other food products from booths, tables, or other temporary structures.
- 3.9 In addition to vendors, the Needham Farmers Market may provide up to two tables, booths or canopies for use by nonprofit corporations or organizations and local artists or artisans. Selling by such groups may occur at no more than two tables and shall be restricted to Garrity's Way.
- 3.10 All food vendors shall obtain food permits from the Needham Board of Health unless excluded by State or Local regulations. All applicable State and Local Health regulations shall be met. Any ice used at the site shall be disposed of at a location approved by the Board of Health and in compliance with Board of Health and Town regulations. Disposal of ice within the Town's drainage system shall not be permitted.

- 3.11 Sale of alcoholic beverages by Needham Farmers Market vendors shall be prohibited. The drinking of alcoholic beverages on Garrity's Way where the farmers market is located shall be prohibited.
- 3.12 Set-up time shall begin no earlier than 10:00 a.m., two hours before the start of the market and break down time shall last no longer than two hours after the market closes at 4:00 p.m. During setup and breakdown, vendors may use parking spaces on Chapel Street to unload and load if the spaces are available. The spaces shall not be reserved for this purpose, but rather utilized if vacant.
- 3.13 The special permit and parking waivers granted herein are specifically premised upon the special characteristics of the farmers market in Garrity's Way and the recognition that Town Hall is closed on Sunday and not utilizing the subject parking spaces. In the event of any change in the use permitted hereunder which would result in a greater parking demand, further site plan review will be required, and the Planning Board shall be entitled to evaluate the parking demand of the building as a whole.
- 3.14 Due diligence must be exercised at all times to avoid excessive off-site parking traffic, tie-ups and unnecessary noise and congestion.
- 3.15 Needham Farmers Market vendors shall be directed to park in the Chapel Street Municipal parking Lot and patrons shall be directed to park in the Chapel Street, Eaton Square, and Chestnut Street Municipal Parking Lots. The musicians may be located on Garrity's Way in the area designed for use by the farmers market.
- 3.16 Free musical entertainment from individuals or small groups at the farmers market, such as flute, fiddle or guitar players, may be utilized. Any required permits from the Board of Selectmen shall be obtained. Amplification, if any, shall be limited and no noise shall extend beyond Garrity's Way. In the event of any complaint or issue regarding the noise, volume or amplification, the Planning Board shall retain jurisdiction to reevaluate the authorization for musical entertainment provided by this Decision.
- 3.17 Vendors shall be permitted to use the restrooms of Center Café and Bagel's Best restaurants. If vendors at any time are no longer allowed or able to use these restrooms, the Petitioner shall find other suitable arrangements and notify the Planning Board.
- 3.18 All trash and waste shall be confined to the site and shall be removed from the site promptly during the breakdown timeframe. No trash or waste shall be left on the site at the end of the breakdown at 6:00 p.m. The Petitioner shall also examine the vicinity adjacent to the market area and shall be responsible for the cleanup of any market trash or waste inadvertently left by patrons in that location. During the operation of the farmers market, trash receptacles shall be provided for the use of patrons.
- 3.19 This Special Permit to operate a farmers market at Garrity's Way is issued to Needham Farmers Market, Inc., 28 Perrault Road, Apt. #1, Needham, MA 02494 and may not be transferred, set over, or assigned by Needham Farmers Market, Inc. to any other person or entity without the prior written approval of the Board following such notice and hearing, if any as the Board, in its sole and exclusive discretion, shall deem due and sufficient.

- 3.20 The Needham Farmers Market may at its discretion exercise its rights under Major Project Site Plan Review Special Permit No. 2012-04, dated April 16, 2014 for the 2018 season in the event that the renovation of the Town Common makes the Garrity's Way location unsuitable. Nothing within this permit shall preclude the use of the alternative Needham Bank site if so selected by the Petitioner in the alternative.
- 3.21 In addition to the provisions of this approval, the Petitioner must comply with all requirements of all state, federal, and local boards, commission or other agencies, including, but not limited to the Building Inspector, Fire Department, Department of Public Works, Conservation Commission, Police Department, and Board of Health.
- 3.22 The Petitioner, by accepting this Approval, warrants that the Petitioner has included all relevant documentation, reports, and information available to the Petitioner in the application submitted, and that this information is true and valid to the best of the Petitioner's knowledge.
- 3.23 Violation of any of the conditions of this Decision shall be grounds for revocation of any building permit or certificate of occupancy granted hereunder as follows: In the case of violation of any conditions of this Decision, the Town will notify the owner of such violation and give the owner reasonable time, not to exceed thirty (30) days, to cure the violation. If, at the end of said thirty (30) day period, the Petitioner has not cured the violation, or in the case of violations requiring more than thirty (30) days to cure, has not commenced the cure and prosecuted the cure continuously, the permit granting authority may, after notice to the Petitioner, conduct a hearing in order to determine whether the failure to abide by the conditions contained herein should result in a recommendation to the Building Inspector to revoke any building permit or certificate of occupancy granted hereunder. This provision is not intended to limit or curtail the Town's other remedies to enforce compliance with the conditions of this Decision including, without limitation, by an action for injunctive relief before any court of competent jurisdiction. The Petitioner agrees to reimburse the Town for its reasonable costs in connection with the enforcement of the conditions of this Decision if the Town prevails in such enforcement action.

LIMITATIONS

- 4.0 The authority granted to the Petitioner by this permit is limited as follows:
- 4.1 This permit applies only to the site improvements, which are the subject of this petition. All construction to be conducted on site shall be conducted in accordance with the terms of this permit and shall be limited to the improvements on the Plan.
- 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 No approval of any indicated signs or advertising devices is implied by this Decision.

- 4.5 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.
- 4.6 This special permit is subject to renewal by the Planning Board on an every 2-year basis upon letter request to the Board with adequate proof of continued permission from the Town of Needham for the continued use of Garrity's Way and Petitioner's request for specific dates and times of operation at the site.
- 4.7 This Decision shall be recorded in the Norfolk District Registry of Deeds. This Decision shall not take effect until (1) a copy of this Decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after this Decision has been filed in the Town Clerk's office or that if such appeal has been filed, that it has been dismissed or denied and (2) this Decision is recorded with Norfolk District Registry of Deeds, and (3) the Petitioner has delivered a certified copy of the recorded document to the Board.

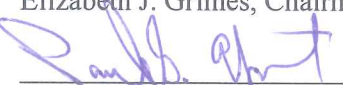
The provisions of this Special Permit shall be binding upon every owner or owner of the lots and the executors, administrators, heirs, successors and assigns of such owners, and the obligations and restrictions herein set forth shall run with the land, as shown on the Plan, as modified by this Decision,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

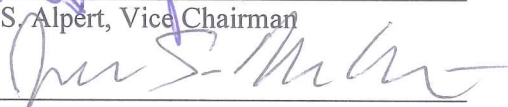
Any person aggrieved by this Decision may appeal pursuant to the General Laws, Chapter 40A, Section 17, within twenty (20) days after filing of this Decision with the Needham Town Clerk.

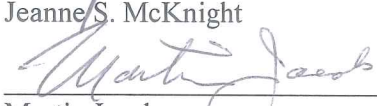
Witness our hands this 25th day of April, 2017.

NEEDHAM PLANNING BOARD


Elizabeth J. Grimes, Chairman


Paul S. Alpert, Vice Chairman


Jeanne S. McKnight

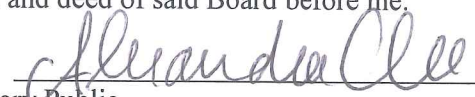

Martin Jacobs


Ted Owens

COMMONWEALTH OF MASSACHUSETTS

April 25 2017

On this 25 day of April, 2017, before me, the undersigned notary public, personally appeared Elizabeth Grimes, one of the members of the Planning Board of the Town of Needham, Massachusetts, proved to me through satisfactory evidence of identification, which was personally known to me, 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: March 18, 2020

TO WHOM IT MAY CONCERN: This is to certify that the 20-day appeal period on the Decision on Needham Farmers Market, Inc., 28 Perrault Road, Apt. #1, Needham, MA 02494 and Town of Needham, 1471 Highland Avenue, Needham, MA, has passed, and there have been no appeals made to this office. (All Judicial Appeals taken from this Decision have been dismissed.)

Date

Theodora K. Eaton, Town Clerk

Copy sent to:

Petitioner - Certified Mail #
Town Clerk
Building Inspector
Director, PWD
Board of Health
Conservation Commission

Board of Selectmen
Engineering
Fire Department
Police Department
Jeff Friedman
Parties in Interest