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PLANNING DIVISION
Planning & Community Development

DECISION
Special Permit
Application No. 2023-01
May 16, 2023

Tristan Roveto dba TWR Fitness
1502 Highland Avenue

DECISION of the Planning Board (hereinafter referred to as the Board) on the petition of Tristan Roveto dba TWR Fitness, 16 Malbert Rd., Brighton, MA 02315 (hereinafter referred to as the Petitioner), for property located at 1502 Highland Avenue, Needham, MA, shown on Assessor's Map No. 50 as Parcel 25 containing 16,365 square feet in the Center Business Zoning District.

This Decision is in response to an application submitted to the Board on April 13, 2023, by the Petitioner for: (1) a Special Permit under Section 3.2.2 of the By-Law for a personal fitness service establishment where all required parking is not located on site in the Center Business District; (2) a Special Permit under Section 3.2.2 of the By-Law for more than one non-residential use on a lot where such uses are not detrimental to each other and are in compliance with all other requirements of the By-Law; (3) a Special Permit under Section 5.1.1.6 of the By-Law to waive strict adherence with the off-street parking requirements of Section 5.1.2, Required Parking, and Section 5.1.3, Parking Plan and Design Requirements.

The requested Special Permit, would, if granted, permit the Petitioner to occupy approximately 675 square feet of the Premises for a Personal Fitness Services Establishment.

After causing notice of the time and place of the public hearing and of the subject matter thereof to be published, posted and mailed to the Petitioner, abutters and other parties in interest as required by law, the hearing was called to order by the Chairperson, Adam Block, on Tuesday, May 16, 2023 at 7:20 p.m. in the Charles River Room, Needham Public Services Administration Building, 500 Dedham Avenue, Needham, MA, as well as by Zoom Web ID Number 880 4672 5264. Board members Adam Block, Jeanne S. McKnight, Paul S. Alpert, Natasha Espada and Artie Crocker were present at the May 16, 2023 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 - Properly executed Application for Special Permits under Section 3.2.2, Section 7.5.2, and Sections 5.1.1.6, 5.1.2 and 5.1.3 of the By-Law. Said application was submitted on April 13, 2023.

Exhibit 2 - Letter from Tristan Roveto, T.W.R. Fitness, undated.

- Exhibit 3 - Plan entitled “Existing Conditions Floor Plan,” dated April 6, 2023.
- Exhibit 4 - Plan entitled “Existing Conditions Floor Plan (Basement),” dated May 5, 2023.
- Exhibit 5 - Interdepartmental Communication (IDC) to the Board from Thomas Ryder, Town Engineer, Department of Public Works, by memo dated May 10, 2023; IDC to the Board from Tara Gurge, Health Department, dated May 10, 2023; IDC to the Board from Chief John Schlittler, Needham Police Department, dated May 8, 2023; IDC to the Board from Dave Roche, Building Commissioner, dated May 8, 2023.

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

FINDINGS AND CONCLUSIONS

- 1.1 The subject property is identified on Town of Needham Assessor’s Map No. 50 as Parcel 25 containing 16,365 square feet in the Center Business Zoning District.
- 1.2 The total space to be leased by the Petitioner contains approximately 675 square feet. The proposal includes use of the shared basement for storage and restroom.
- 1.3 The proposed business is a personal training facility, as further described in Sections 1.4, 1.5, 1.6 and 1.7 below.
- 1.4 There will be a maximum of one (1) employee and five (5) clients on-site at any one time. The studio will provide private and semi-private fitness training, generally with a maximum of 5 clients per time slot, by appointment only.
- 1.5 The facility will provide private (1 client) and semi-private (2-5 clients) fitness training.
- 1.6 All services will be by appointment only. The Petitioner is a small appointment-based personal training facility and does not intend to offer larger classes for group training. No more than an estimated 6 available time slots (approximately one hour in length) will be filled on any given day. An estimated 5 semi-private group sessions will be offered per week. For all but an estimated 5 hours of TWR Fitness’s weekly operation, there will be a maximum of 2 persons (1 employee, 1 client) on site at any given time.
- 1.7 The proposed hours of operation are 6:00 a.m. to 8:00 p.m. Monday through Friday and 7:00 a.m. to 6:00 p.m. Saturday and Sunday.
- 1.8 It is the Petitioner’s expectation that clients will usually arrive just before the appointment time and leave shortly thereafter. There will be no shower facilities on site.
- 1.9 No building permit is required for this proposal, as no interior work is necessary or proposed.
- 1.10 The Petitioner has requested a Special Permit under Section 5.1.1.6 of the By-Law to waive strict adherence with the off-street parking requirements of Section 5.1.2; more specifically, to reduce the number of required parking spaces. The total parking demand for the subject premises with the new use can be calculated in two ways. The first method yields a requirement of 6 parking spaces calculated as follows: 675 sq. ft. of first floor area for the “personal fitness” use @ 1 space / 150 square feet = 4.5 spaces, plus one space for every

three employees on the largest shift (1 total employee) = 1 spaces, for a total of 5.5 spaces, rounded up to 6 spaces. Note: the shared basement was not included in the calculation. The second method yields a total requirement of 20 parking spaces. In the later circumstance where facility size is known and occupancy and parking demand will be controlled by the method of operation, the Planning Board may reduce the number of parking spaces required for a personal fitness service establishment to one parking space per employee and visitor present on the site at any one time during the peak usage period. Using this method, the total number of required spaces is also 6 spaces. In both cases, a parking waiver on the number of required spaces will be required for the proposed use, because there is only one parking space associated with this property, which will be used for the employee. Therefore, the Petitioner requests a waiver of 6 spaces.

The prior occupant of 1502 Highland Avenue, a retail use selling clothing, generated a parking demand of 1 space per 300 square feet, requiring a total of 2 spaces. The proposed personal fitness use requires an increase of 4 spaces.

- 1.11 Pursuant to Section 5.1.1.3 of the By-Law no change or conversion of a use in a mixed use structure to a use which requires additional parking shall be permitted unless off-street parking is provided in accordance with Section 5.1.2 and Section 5.1.3 for the entire structure or a waiver is granted pursuant to the provisions of Section 5.1.1.6. As there is only one parking space associated with the property, a waiver under the provisions of Section 5.1.1.6 is required. The Petitioner has requested a Special Permit under Section 5.1.1.6 of the By-Law to waive strict adherence with the off-street parking requirements of Section 5.1.2, more specifically, to reduce the number of required parking spaces.
- 1.12 The Petitioner has requested 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.
- 1.13 The Petitioner has requested a Special Permit under Section 3.2.2 of the By-Law for a “Personal fitness service establishment” where there is insufficient off-street parking on-site to serve all land uses located thereon in adherence with the requirements of Section 5.1.2 but where it can be demonstrated that the hours, or days, of peak parking for the uses are sufficiently different that a lower total will provide adequately for all uses or activities served by the parking lot, provided the Board finds that the 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 and to comply with all applicable By-Law requirements.
- 1.14 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.
- 1.15 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 (Required Parking) 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 requirements and that the project demonstrates that it is providing the maximum number of off-street parking spaces practicable. On the basis of the above findings and conclusions, the Board finds that there are special circumstances for a reduction in the number of required parking spaces and design requirements, as conditioned and limited herein, which will also be consistent with the intent of the By-Law and which will not increase the detriment to the Town's and neighborhood's inherent use.

THEREFORE, the Board voted 5-0 to GRANT: 1) a Special Permit under Section 3.2.2 of the By-Law for a personal fitness service establishment where all required parking is not located on site in the Center Business District; (2) a Special Permit under Section 3.2.2 of the By-Law for more than one non-residential use on a lot where such uses are not detrimental to each other and are in compliance with all other requirements of the By-Law; (3) a Special Permit under Section 5.1.1.6 of the By-Law to waive strict adherence with the off-street parking requirements of Section 5.1.2, Required Parking, and Section 5.1.3, Parking Plan and Design Requirements; 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 The Plans shall be modified to include the requirements and recommendations of the Board as set forth below. The modified plans shall be submitted to the Board for approval and endorsement.

No Plan Modifications Required.

CONDITIONS

- 3.0 The following conditions of this approval shall be strictly adhered to. Failure to adhere to these conditions or to comply with all applicable laws and permit conditions shall give the Board the rights and remedies set forth in Section 3.18 of this Decision.
- 3.1 The floor plan shall be substantially consistent with the floor plan as submitted, movement of non-fixed equipment and fixed equipment is of no concern, provided no more than 675 square feet of Personal Fitness Service Establishment space is provided (excluding the restroom, stairway and basement).
- 3.2 The operation of the proposed personal fitness facility at 1502 Highland Avenue, Needham, Massachusetts shall be as described in Sections 1.4, 1.5, 1.6 and 1.7 of this Decision and as further described under the support materials provided under Exhibits 2, 3 and 4 of this Decision.

- 3.3 The Personal Fitness Services Establishment may be open for business 6:00 a.m. to 8:00 p.m. Monday through Friday and 7:00 a.m. to 6:00 p.m. Saturday and Sunday.
- 3.4 No more than one (1) employee and five (5) clients may be present and using the facility at any one time.
- 3.5 The special permit and parking waivers granted herein are specifically premised upon the special characteristics of the Personal Fitness Services Establishment operated by Tristan Roveto. In the event of any change in the use permitted hereunder which would result in a greater parking demand, further review will be required, and the Planning Board shall evaluate the parking demand of the building as a whole.
- 3.6 This Special Permit to operate TWR Fitness at 1502 Highland Avenue, Needham, MA is issued to Tristan Roveto, 16 Malbert Rd., Brighton, MA 02315, and may not be transferred, set over, or assigned by Tristan Roveto, to any other person or entity other than an affiliated entity in which Tristan Roveto has a controlling interest of greater than 50 percent, without the transferee filing a letter with the Board acknowledging that it has read this Decision and agrees to its terms and conditions..
- 3.7 The proposed Personal Fitness Services Establishment facility use shall contain the dimensions and be located on that portion of the locus exactly as shown on the Plan, as modified by this Decision, and in accordance with applicable dimension requirements of the By-Law. Any changes, revisions or modifications to the Plan, as modified by this Decision, shall require approval by the Board.
- 3.8 The Petitioner recognizes the desire of the Board to assure a viable active retail storefront presence on the major thoroughfares of the Town and shall work in its configuration of its operation to assure that goal is met.
- 3.9 That trash receptacles shall be provided if required, and the area shall be kept free of litter. The trash receptacles if required shall be emptied as needed, cleaned, and maintained to meet Board of Health Standards.
- 3.10 As no building permit is required for this proposal and no interior work is proposed or required, no as-built plan is required.
- 3.11 The space that is the subject of this Special Permit shall not be occupied until:
- (a) The Petitioner shall have recorded with the Norfolk County Registry of Deeds a certified copy of this Decision granting this Special Permit Approval with the appropriate reference to the book and page number of the recording of the Petitioners title deed or notice endorsed thereon.
- 3.12 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.
- 3.13 All solid waste shall be removed from the site by private contractor.

- 3.14 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.
- 3.15 Violation of any of the conditions of this Approval 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 Approval, 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 Approval 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 Approval 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, as modified by this Decision.
- 4.2 This Decision applies only to the requested Special Permits. 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.
- 4.3 No approval of any indicated signs or advertising devices is implied by this Decision.
- 4.4 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.
- 4.5 This Special Permit shall lapse on May 16, 2025 if substantial use thereof has not sooner commenced, except for good cause. Any requests for an extension of the time limits set forth herein must be in writing to the Board at least 30 days prior to May 16, 2025. The Board herein reserves its rights and powers to grant or deny such extension without a public hearing. The Board, however, shall not grant an extension as herein provided unless it finds that the use of the property in question or the construction of the site has not begun, except for good cause.
- 4.6 This approval shall be recorded in the Norfolk District Registry of Deeds. This Special Permit shall not take effect until a copy of this Decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the Decision has been filed in the Town Clerk's office or that if such appeal has been filed, that it has been dismissed or denied is recorded with Norfolk District Registry of Deeds and until 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.

