

**THE LAW OFFICE OF
RICHARD S. MANN**
ATTORNEY

845 WASHINGTON STREET
SUITE 501
NEWTON, MA 02460

RICHARD S. MANN, ESQ.
TEL: 617-771-3361
RMANN@RICKMANNLAW.COM

May 26, 2021
Planning Board
Town of Needham
Public Services Administration Building
500 Dedham Avenue
Needham, MA 02492

Re: 100-120 Highland Avenue-Application for Amendment to Major Project Site Plan
Special Permit No. 2005-07

Ladies and Gentlemen:

On behalf of the Applicant, Needham Gateway, LLC, enclosed are the following:

1. Application for Major Project Site Plan Special Permit No. 2005-07; and
2. Check for \$1,000.00 payable to the Town of Needham for the applicable fee.

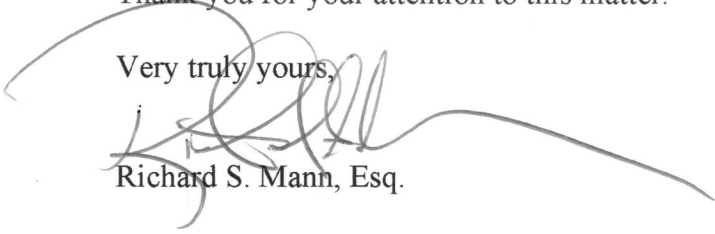
Given the nature of the requested amendment, no plans are being submitted with this Application.

Please instruct the newspaper to send the invoice for the legal notice to:

Michael Moskowitz
66 Cranberry Lane
Needham, MA 02492
Tel Number: (781)-910-7933

Thank you for your attention to this matter.

Very truly yours,



Richard S. Mann, Esq.

cc: Michael Moskowitz

**TOWN OF NEEDHAM
MASSACHUSETTS**



500 Dedham Avenue
Needham, MA 02492
781-455-7550

PLANNING BOARD

**FURTHER
APPLICATION FOR SITE PLAN REVIEW**

Project Determination: (circle one)

Major Project

Minor Project

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

Location of Property 100 and 120 HIGHLAND AVENUE, NEEDHAM, MA
Name of Applicant NEEDHAM GATEWAY, LLC
Applicant's Address 66 Cranberry Lane, Needham, MA 02492
Phone Number 781-910-7933

Applicant is: Owner _____ Tenant x
Agent/Attorney _____ Purchaser _____

Property Owner's Name BMI REALTY TRUST
Property Owner's Address 26 Pine Tree Drive, Buzzards Bay, MA 02532
Telephone Number 617-462-9119

Characteristics of Property: Lot Area 82,581+/- Present Use RETAIL
Map # 73 Parcel # 18 Zoning District Highland Commercial-128 and New England Business Center

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

SEE ATTACHED RIDER A.

Signature of Applicant (or representative)

Address if not applicant _____

Telephone # 781-910-7933

Owner's permission if other than applicant _____

elizabeth berejick

Trustee of BMI Realty Trust

SUMMARY OF PLANNING BOARD ACTION

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

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

SIGNATURE
CERTIFICATE**REFERENCE NUMBER**
9CFC30E4-AE6C-4123-A291-38921FE264B3

TRANSACTION DETAILS

Reference Number
9CFC30E4-AE6C-4123-A291-38921FE264B3**Transaction Type**
Signature Request**Sent At**
05/19/2021 17:44 EDT**Executed At**
05/19/2021 17:48 EDT**Identity Method**
email**Distribution Method**
email**Signed Checksum**

77a1a92961e111c2b7d2c6123bat2911a352a2e0a601e3c9dc732d2c7a02

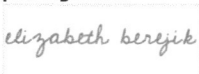
Signer Sequencing
Disabled**Document Passcode**
Disabled

DOCUMENT DETAILS

Document Name
Needham Gateway Sp Amendment App**Filename**
needham_gateway_sp_amendment_app.pdf**Pages**
1 page**Content Type**
application/pdf**File Size**
319 KB**Original Checksum**

c50a5b5c782a601c9e7c6e1e2ae3c9a2b292b6a62d3f1bd221dc882e61

SIGNERS

SIGNER	E-SIGNATURE	EVENTS
Name Betty Ann Berejik	Status signed	Viewed At 05/19/2021 17:47 EDT
Email berejikmotors@aol.com	Multi-factor Digital Fingerprint Checksum 76c2c95c22285a91ced7cde6c1c1dd12d1dc82e275ae233c571a1769c12	Identity Authenticated At 05/19/2021 17:48 EDT
Components 1	IP Address 73.4.195.241	Signed At 05/19/2021 17:48 EDT
	Device Chrome via Windows	
	Typed Signature 	
	Signature Reference ID 716F1199	

AUDITS

TIMESTAMP	AUDIT
05/19/2021 17:44 EDT	Mike Moskowitz (mike@eclipsegmt.com) created document 'needham_gateway_sp_amendment_app.pdf' on Chrome via Windows from 75.69.114.193.
05/19/2021 17:44 EDT	Betty Ann Berejik (berejikmotors@aol.com) was emailed a link to sign.
05/19/2021 17:47 EDT	Betty Ann Berejik (berejikmotors@aol.com) viewed the document on Chrome via Windows from 73.4.195.241.
05/19/2021 17:48 EDT	Betty Ann Berejik (berejikmotors@aol.com) authenticated via email on Chrome via Windows from 73.4.195.241.
05/19/2021 17:48 EDT	Betty Ann Berejik (berejikmotors@aol.com) signed the document on Chrome via Windows from 73.4.195.241.

RIDER A
**TO APPLICATION FOR AMENDMENT
TO SPECIAL PERMIT NO. 2005-07**

Reference is made to the Major Project Site Plan Special Permit No. 2005-07 issued to Needham Gateway, LLC (the "Applicant") on January 24, 2006 as amended August 15, 2006, December 19, 2006, April 1, 2008, November 15, 2011 and March 6, 2012 (collectively, the "Special Permit") with respect to a parcel of land containing approximately 82,581 square feet (the "Land") known as and numbered 100 and 120 Highland Avenue, Needham, MA. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Special Permit.

Pursuant to the Special Permit, Applicant has completed construction of two buildings on the Land, one located at 100 Highland Avenue containing 10,628 square feet of floor area and the other located at 120 Highland Avenue containing 12,820 square feet of floor area (both buildings, together with all other improvements on the Land are herein collectively referred to as the "Shopping Center").

Section 3.2 of the Special Permit, limits the use of 10,628 square feet of the building at 100 Highland Avenue and 8,020 square feet of the building at 120 Highland Avenue "exclusively for general retail purposes" and "craft, consumer, professional or commercial service establishments dealing directly with the general public." However, even though otherwise allowed as of right or by special permit in the underlying Highland Commercial-128 Zoning District, Section 3.3 of the Special Permit expressly prohibits the following uses in the Shopping Center: (1) all sit down food and beverage restaurants; (2) all fast food pick up and/or delivery restaurants, excepting Panera Bread; (3) all sports clubs and/or athletic merchandise stores; (4) all convenience markets; (5) all pharmacy stores; (6) all banks; and (7) all video rental stores."

The Applicant expects that approximately 12,000 square feet of space in the Shopping Center (almost half of the Center's total rentable area) will become available over the next 12 months based on lease non-renewals. As a result, the Applicant has been actively seeking replacement tenants for this space in order to ensure the economic stability of the Shopping Center.

These efforts are taking place in the midst of the unprecedented Covid-19 pandemic which has had devastating economic consequences for many retail operators throughout the country. To state the obvious, this is an extraordinarily challenging time to be re-letting space in the Shopping Center. The only significant interest received for the soon to be vacant space has come from operators of commercial uses that are prohibited by the terms of the Special Permit, even though such uses are either allowed as a matter of right or by special permit within the underlying Highland Commercial-128 Zoning District.

These prohibitions have placed the Shopping Center at an unfair competitive disadvantage relative to other properties in the Highland Commercial-128 Zoning District and relative to other properties in neighboring Newton along Needham Street with whom the Shopping Center competes for tenants. Since the issuance of the original Special Permit in 2006, there has been a sea-change in the world of brick and mortar retail caused by the increasing trend towards on-line purchasing. This trend, coupled with the impact of the Covid-19 pandemic, has significantly limited the

universe of potential retail tenants. In this context, the use restrictions contained in the Special Permit create a serious impediment to the success of the Shopping Center.

For the foregoing reasons, the Applicant seeks to amend the Special Permit to delete Section 3.3 in its entirety and substitute in its place the following revised Section 3.3

“3.3 All uses allowed in the Highland Commercial-128 Zoning District as of right under the Zoning By-Laws of the Town of Needham shall be allowed in the Shopping Center as of right and all uses allowed by special permit under the Zoning By-Laws of the Town of Needham shall be allowed in the Shopping Center by special permit.”

This amendment will not affect the ability of the Planning Board to exercise its authority as to any of the myriad of uses allowed in the Highland Commercial-128 Zoning District allowed only by special permit. As to the uses allowed as a matter of right, the Applicant will be placed on an even playing field with other commercial properties in the same zoning district, a result that is fair and equitable.