



TOWN OF NEEDHAM

PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT

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DECISION

June 16, 2020

PLANNING

Spiga, LLC 18 Highland Circle, Needham, MA
Application No. 2020-01

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

Decision of the Planning Board (hereinafter referred to as the "Board") on the petition of Spiga, LLC, 18 Highland Circle, Needham, MA, (hereinafter referred to as the Petitioner) for property located at 18 Highland Circle, Needham, Massachusetts. Said property is shown on Needham Town Assessors Plan, No. 74 as Parcels 7 and 8 containing a combined total of 12,469 square feet and is found in the Mixed Use-128 Zoning District and Highland Commercial-128 Zoning District.

This decision is in response to an application submitted to the Board on May 15, 2020, by the Petitioner for a Special Permit under Section 4.9.3 of the Needham Zoning By-Law (hereinafter the By-Law) to allow the reduction of the side yard setback by 25% from 10 feet to 7.5 feet.

After causing notice of the time and place of the public hearing and of the subject matter hereof 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, Martin Jacobs on Tuesday, June 16, 2020 at 7:15 p.m. via remote meeting using Zoom ID 826-5899-3198. Board members, Martin Jacobs, Jeanne S. McKnight, Paul S. Alpert, Ted Owens and Adam Block were present throughout the proceedings. 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 - Planning Board Application Form completed by the applicant dated May 15, 2020, with Addendum A.
- Exhibit 2 - One letter to Lee Newman, Director, Planning and Community Development, from George Giunta Jr., Attorney, dated May 14, 2020.
- Exhibit 3 - One letter to Lee Newman, Director, Planning and Community Development, from Francesco Iacovitti, Manager, Spiga, LLC, dated May 8, 2020.
- Exhibit 4 - Plan entitled "Site Plan of Land Showing Proposed Additions," prepared by Site Design Consultants, 76 Nehoiden Street, Needham, MA, dated April 23, 2015, revised August 21, 2015, May 14, 2020.
- Exhibit 5 - Plan entitled "Proposed Vestibule Structure," prepared by Nunes Trabucco Architects, 315a Chestnut Street, Needham, MA 02492, dated May 5, 2020.

- Exhibit 6 - Commercial lease between Jordan R. Appel, 6 Arden Road, Newton, Massachusetts, and David H. Fleischer and Aaron N. Fleischer, Trustees, Daron Realty Trust, for property located on Highland Circle, Needham, Massachusetts. Said lease executed on May 1, 1986.
- Exhibit 7 - Assignment of lease from David H. Fleischer and Aaron N. Fleischer, Trustees, Daron Realty Trust, for property located on Highland Circle, Needham, Massachusetts, to Riti Realty Trust, Maria Serpentino Iriti, Trustee. Said assignment executed on May 1, 1986.
- Exhibit 8 - Needham Board of Appeals Decision issued to Maria S. and Carmelo Iriti, Trustees, Riti Realty Trust Two. Said decision dated May 19, 2005 and filed with the Town Clerk on May 26, 2005.
- Exhibit 9 - Interdepartmental Communication (IDC) to the Board from John Schlittler, Chief, Needham Police Department, dated June 16, 2020; IDC to the Board from Dennis Condon, Chief, Fire Department, dated June 16, 2020; and IDC to the Board from Tara Gurge, Health Department, dated June 9, 2020.

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

FINDINGS AND CONCLUSIONS

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

- 1.1 The subject property is located in the Mixed Use-128 Zoning District and Highland Commercial-128 Zoning District at 18 Highland Circle, Needham, MA. Said property is shown on Needham Town Assessors Plan Map No. 74 as Parcels 7 and 8 containing a combined total of 12,469 square feet. Parcel 7 is owned by Highland Circle, LLC, a Massachusetts limited liability company with an address of 21 Highland Circle, Suite 6, Needham, MA 02494, Maria Iriti, Manager. Parcel 8 is held by the Riti Realty Trust, Maria Iriti, Trustee under a 99-year lease ending on November 23, 2081.
- 1.2 Parcel 8, which is currently occupied by the existing parking area, consists of 6,505 square feet of area, with 103.99 feet of frontage on Highland Circle. Parcel 7, which is currently occupied by the restaurant and associated parking, walkways and patio areas, consists of 5,964 square feet of area with 94.45 feet of frontage on Highland Circle. Slightly more than half of Lot A is located in the MU-128, with the remainder located in the HC-128. Lot B, which is currently occupied by the restaurant and associated parking, walkways and patio areas, consists of 5,964 square feet of area with 94.45 feet of frontage on Highland Circle. Lot B is entirely within the MU-128. The Premises is fully developed, with virtually no existing landscaping or green space, excepting only two rows of existing arborvitae trees on the east and west sides of Lot A.
- 1.3 Based on the records of the Assessor's Department and the Building Department, the front portion of the existing building, which consists of two stories and has a footprint of approximately 441 square feet, appears to have been built in approximately 1900. The rear portion of the existing building, which consists of one story and has a footprint of approximately 1,671 square feet, appears to have been built in 1981. By Decision of the Zoning Board of Appeals, dated May 19, 2005, filed with the Town Clerk on May 26, 2005, the building was converted from its prior use to a 54-seat restaurant. On April 17, 2008, the Board of Appeals voted to authorize an additional 48 outdoor, seasonal seats. However, because no written decision was issued relative to such vote, the relief granted was never perfected, and in 2018, Spiga sought

and received approval for 16 outdoor seats pursuant to Section 6.9 of the Zoning By-Law to address the lapse in permitting relative to the outdoor seats.

- 1.4 The site is currently occupied by Spiga Restaurant. The Petitioner now seeks to construct a vestibule addition in front of the existing entrance, and install a tent in the location of the existing outdoor seating. While the tent can be “rolled back” to be open in nice weather, the framework is permanently affixed and therefore constitutes a structure for zoning purposes. In connection therewith, Spiga is also seeking to increase the patio seating from 16 to 32 total seats. As a result, upon completion, the restaurant will contain a total of 86 seats, serving the same food and operating in substantially the same manner it has for the past 15 years.
- 1.5 The Petitioner has made application to the Zoning Board of Appeals for special permits relating to the use, the change to the building and parking. However the Petitioner also requires a special permit waiver pursuant to Section 4.9.3 of the By-Law to reduce the applicable side-yard setback. While the Board of Appeals has jurisdiction over the substantial majority of the project, Section 4.9.3 provides that only the Planning Board has jurisdiction to grant the required special permit waiver to reduce the setback by 25% from 10 feet to 7.5 feet.
- 1.6 Pursuant to Section 4.9 of the By-Law, buildings in the MU-128 are required to have a minimum front setback of 5 feet, a side setback of 10 feet, a rear setback of 10 feet, and a maximum height of 70 feet. The setbacks for the existing building on Parcel 7 are: 25.4, front; 0.9 right side, 3.0 left side, and 1.4 rear. While the side and rear setbacks do not comply with the current requirements of the MU-128 District, as indicated above, the building was constructed well prior to the creation of the MU-128 District and is lawful, pre-existing, non-conforming. Moreover, no change is proposed for the portions of the building encroaching into the current applicable setback.
- 1.7 With respect to the proposed additions, both additions are well under 70 feet in height. A portion of the vestibule encroaches into the side-yard setback, and therefore will require a variance from the Board of Appeals, but the remainder of the vestibule as well as the tent are proposed to be setback 7.5 feet from the left side-line and 18.6 feet from Highland Circle. As a result, such portions of the project will only comply if the Planning Board issues a special permit waiver, pursuant to Section 4.9.3 reducing the setback requirement to 7.5 feet.
- 1.8 Accordingly, in connection with the Application, the Petitioner seeks approval from the Planning Board for the reduction of the side yard setback for Parcel 7 with regard to the lot line between Parcels 7 and 8 by 25% from 10 feet to 7.5 feet. The specific side yard in question is at the boundary between Parcels 7 and 8.
- 1.9 Under Section 4.9.3 of the By-Law, a Special Permit to waive dimensional requirements by relaxing them by a maximum of 25% may be granted in the Mixed-Use 128 Zoning District if the Board finds that, given the particular location and/or configuration of a project in relation to the surrounding neighborhood, the proposed waivers are consistent with the public good and that the proposed Project complies with the standards and criteria set forth in the provisions of the By-Law. The Board notes that Parcel 7 is owned by a limited liability company, owned and managed by Maria Serpentino Iriti and that Parcel 8 is held by Mrs. Iriti, as Trustee of Riti Realty Trust under a 99-year lease ending on November 23, 2081 thereby effectively making the required setback from an interior lot line. On the basis of the above findings and criteria, the Board finds that the proposed Project plan, as conditioned and limited herein, to meet these requirements, to be in harmony with the general purposes and intent of the By-Law, to comply with all applicable By-Law requirements, and will not be a detriment to the town’s and neighborhood’s inherent use of the surrounding area.

THEREFORE, the Board voted 5-0 to GRANT: (1) the requested Special Permit under Section 4.9.3 of the Needham Zoning By-Law to allow the reduction of the side yard setback for Parcel 7 with regard to the lot line between Parcels 7 and 8 by 25% from 10 feet to 7.5 feet; 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.

2.0 The Plan 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. All requirements and recommendations of the Board, set forth below, shall be met by the Petitioner.

- a) The Plan shall be revised to show a barrier between the parking spaces and the tent sufficient to assure protection of the outdoor seating area from automobile intrusion. Said barrier shall be reviewed and approved by the Police Chief and the Fire Chief.
- b) The Plan shall be revised to correct a typo in the parking table.

CONDITIONS AND LIMITATIONS

3.0 The proposed addition subject to the reduction of the side yard setback for Parcel 7 with regard to the lot line between Parcels 7 and 8 by 25% from 10 feet to 7.5 feet shall be constructed in accordance with the Plan, as modified by this Decision. Any changes, revisions or modifications to the Plan, as modified by this Decision, shall require approval by the Board, except that Petitioner may forgo construction of the vestibule addition, and install the tent on its own, without the need for further review.

3.1 Said approval is conditioned upon the receipt of the Special Permit Approval from the Board of Appeals to permit the replacement of the existing outdoor patio and seats with a permanent tent structure containing 32 total seats, for a total of 86 seats, and construct a vestibule addition near the existing building entry.

3.2 No building permit shall be issued in pursuance of the Special Permit approval until:

- a. The final plans shall be in conformity with those approved by the Board, and a statement certifying such approval shall have been filed by this Board with the Building Inspector.
- b. The Petitioner shall have received a Special Permit from the Board of Appeals for the replacement of the existing outdoor patio and seats with a permanent tent structure containing 32 total seats, for a total of 86 seats, and construction a vestibule addition near the existing building entry, as further described in Section 1.4 of this Decision.

c. The Petitioner shall have recorded with the Norfolk County Registry of Deeds a certified copy of this Decision granting this Special Permit with the appropriate reference to the book and page number of the recording of the Petitioner's title deed or notice endorsed thereon.

3.3 No building or structure, or portion thereof, subject to this Special Permit Approval shall be occupied until:

a. An as-built plan, supplied by the engineer of record certifying that the on-site project improvements were built according to the approved documents, has been submitted to the Board and Department of Public Works. The as-built plan shall show the building, approved changes to the finished grades, final construction details of the altered parking areas, and sidewalk and curbing improvements on-site, in their true relationship to the lot lines. In addition to the engineer of record, said plan shall be certified by a Massachusetts Registered Land Surveyor.

b. That there shall be filed with the Building Inspector and Board a statement by the Department of Public Works certifying that the approved changes to the building, approved changes to the finished grades, final construction details of the altered parking areas, sidewalk and curbing improvements on-site, have been constructed to the standards of the Town of Needham Department of Public Works and in accordance with the approved Plan.

c. That there shall be filed with the Board and Building Inspector a Certificate of Compliance or Final Affidavit signed by a registered architect upon completion of construction.

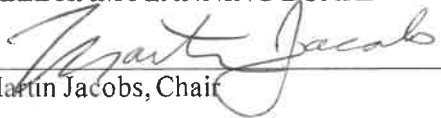
This approval shall be recorded in the Norfolk District Registry of Deeds. This Special Permit shall not take effect until a copy of this decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after the decision has been filed in the Town Clerk's office or that if such appeal has been filed, that it has been dismissed or denied is recorded with Norfolk District Registry 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, in full force and effect for the benefit of and enforceable by the Town of Needham.

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

Witness our hands this 16th day of June, 2020.

NEEDHAM PLANNING BOARD



Martin Jacobs, Chair

Paul S. Alpert

Adam Block

Jeanne S. McKnight

Ted Owens

TO WHOM IT MAY CONCERN: This is to certify that the 20-day appeal period on the Amendment to Decision of the project proposed by Spiga LLC, 18 Highland Circle, Needham, MA, for property located at Spiga LLC, 18 Highland Circle, Needham, MA, has passed,

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

Date

Theodora K. Eaton, Town Clerk

Copy sent to:

Petitioner
Design Review Board
Building Inspector
Conservation Commission
George Giunta, Jr., Attorney

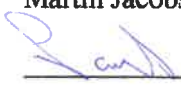
Select Board
Engineering
Fire Department
Police Department

Board of Health
Town Clerk
Director, PWD
Parties in Interest

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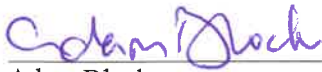
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